

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0650

Reversed & Remanded

PROCEDURAL HISTORY AND FINDINGS OF FACT: On May 21, 2021, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was not eligible for PUA benefits effective December 27, 2020. On June 10, 2021, the May 21, 2021 PUA determination became final without claimant having filed a request for hearing. On September 2, 2022, the Department served notice of an administrative decision based in part on the May 21, 2021 PUA determination, concluding that claimant received benefits to which they were not entitled and assessing an overpayment of \$2,460 in PUA benefits and \$3,600 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay to the Department (decision # 113619).¹ On September 22, 2022, decision # 113619 became final without claimant having filed a request for hearing. On October 24, 2022, claimant filed late requests for hearing on the May 21, 2021 PUA determination and decision # 113619.

ALJ Kangas considered claimant's requests, and on April 3, 2023 issued Orders No. 23-UI-220877 and 23-UI-220888, dismissing claimant's requests for hearing on the May 21, 2021 PUA determination and decision # 113619 as late, subject to claimant's right to renew the requests by responding to appellant questionnaires by April 17, 2023. On April 20, 2023, claimant filed late responses to the appellant questionnaires and timely applications for review of Orders No. 23-UI-220877 and 23-UI-220888 with the Employment Appeals Board (EAB). On June 13, 2023, ALJ Kangas mailed letters stating that the Office of Administrative Hearings (OAH) would not consider claimant's questionnaire responses or issue additional orders regarding these matters because the questionnaire responses were late. These matters come before EAB based upon claimant's April 20, 2023 applications for review of Orders No. 23-UI-220877 and 23-UI-220888.

¹ The original version of decision # 113619, issued on September 2, 2022, found that claimant's overpayment was the result of an administrative decision dated March 15, 2020. On December 1, 2022, the Department issued an amended version of decision # 113619 which corrected the findings of fact to find that the overpayment was the result of the May 21, 2021 administrative decision. The amended version of decision # 113619 contained no substantive changes, and the date on which the decision became final remained September 22, 2022.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-220877 and 23-UI-220888. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2023-EAB-0650 and 2023-EAB-0651).

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is claimant's responses to the appellant questionnaires and enclosed documents, marked as EAB Exhibit 1, and a copy provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the exhibit(s) will remain in the record.

CONCLUSIONS AND REASONS: Orders No. 23-UI-220877 and 23-UI-220888 are set aside and these matters remanded for a hearing on whether claimant's late requests for hearing on the May 21, 2021 PUA determination and decision # 113619 should be allowed and, if so, the merits of those decisions.

ORS 657.269 provides that the Department's decisions become final unless a party files a request for hearing within 20 days after the date the decision is mailed. ORS 657.875 provides that the 20-day deadline may be extended a "reasonable time" upon a showing of "good cause." OAR 471-040-0010 (February 10, 2012) provides that "good cause" includes factors beyond an applicant's reasonable control or an excusable mistake, and defines "reasonable time" as seven days after those factors ceased to exist.

Under OAR 471-040-0010(1)(b)(A), "good cause" does not include the failure to receive a document due to not notifying the Department or OAH of an updated address while the person is claiming benefits or if the person knows, or reasonably should know, of a pending appeal. Under OAR 471-040-0010(2), and notwithstanding section (1) of that rule, "good cause for failing to file a timely request for hearing shall exist when the appellant provides satisfactory evidence that the Employment Department failed to follow its own policies with respect to providing service to a limited English proficient person, including the failure to communicate orally or in writing in a language that could be understood by the limited English proficient person upon gaining knowledge that the person needed or was entitled to such assistance."

The requests for hearing on the May 21, 2021 PUA determination and decision # 113619 were due by June 10, 2021 and September 22, 2022, respectively. Because claimant did not file their requests for hearing until October 24, 2022, the requests were late.

In their appellant questionnaire response for the May 21, 2021 PUA determination, claimant indicated that they first received that decision on October 24, 2022. EAB Exhibit 1 at 1. Claimant further stated in that response that they "did not receive any hearing request [*sic*] due on June 10, 2021." EAB Exhibit 1 at 2. However, claimant had previously indicated in a message sent to the Department on October 25, 2022, via a statement their daughter helped them to translate, that they had "received [a] notice in late May 2021" which subsequently caused them to submit proof of employment to the Department. EAB Exhibit 1 at 4. Additionally, claimant indicated that they have limited English proficiency, that they

moved to California with their daughter in December 2021, and that they set up a forwarding address for their mail at that time. EAB Exhibit 1 at 4.

Further, claimant's documents enclosed with the questionnaire responses included an image of a letter from the Department that was delivered on or around October 11, 2022 and an overpayment bill from the Department dated October 5, 2022. EAB Exhibit 1 at 23-25. In claimant's appellant questionnaire response for decision # 113619, claimant indicated that they did not receive that decision, and that their first notice regarding that decision was when they received the overpayment bill. EAB Exhibit 1 at 22.

Claimant's statements and provided documents suggest multiple factors which may have caused or contributed to their failures to file timely requests for hearing on the May 21, 2021 PUA determination and decision # 113619. First, it is not clear when, if at all, claimant ever received either of the administrative decisions. Next, claimant's responses suggest that they might have failed to receive at least one of the administrative decisions due to having moved. Finally, claimant's responses suggest that they may have either failed to receive the administrative decisions, or else misunderstood how to properly appeal them, due to a language barrier.

On remand, the ALJ should inquire as to when, if at all, claimant received each of the administrative decisions and, if claimant did not receive either of them, what factors caused them to fail to receive them. The ALJ should also inquire as to whether the Department mailed the administrative decisions to claimant's correct address at the time that they were each mailed and, if not, whether claimant was claiming benefits or knew or reasonably should have known of a pending appeal at the time the decisions were mailed. Finally, the ALJ should inquire as to whether claimant's limited English proficiency, or the Department's failure to provide adequate service to claimant in a language that claimant understood, was the cause of claimant's failure to file timely requests for hearing.

Orders No. 23-UI-220877 and 23-UI-220888 therefore are reversed, and these matters remanded for a hearing on whether claimant's late requests for hearing should be allowed and, if so, the merits of the May 21, 2021 PUA determination and decision # 113619.

DECISION: Orders No. 23-UI-220877 and 23-UI-220888 are set aside, and these matter remanded for further proceedings consistent with this order.

D. Hettle and A. Steger-Bentz;
S. Serres, not participating.

DATE of Service: June 23, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 23-UI-220877 and 23-UI-220888 or return these matters to EAB. Only timely applications for review of the subsequent orders will cause these matters to return to EAB.

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Understanding Your Employment Appeals Board Decision

English

Attention – This decision affects your unemployment benefits. If you do not understand this decision, contact the Employment Appeals Board immediately. If you do not agree with this decision, you may file a Petition for Judicial Review with the Oregon Court of Appeals following the instructions written at the end of the decision.

Simplified Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

Traditional Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

Tagalog

Paalala – Nakakaapekto ang desisyong ito sa iyong mga benepisyo sa pagkawala ng trabaho. Kung hindi mo naiintindihan ang desisyong ito, makipag-ugnayan kaagad sa Lupon ng mga Apela sa Trabaho (Employment Appeals Board). Kung hindi ka sumasang-ayon sa desisyong ito, maaari kang maghain ng isang Petisyon sa Pagsusuri ng Hukuman (Petition for Judicial Review) sa Hukuman sa Paghahabol (Court of Appeals) ng Oregon na sinusunod ang mga tagubilin na nakasulat sa dulo ng desisyon.

Vietnamese

Chú ý - Quyết định này ảnh hưởng đến trợ cấp thất nghiệp của quý vị. Nếu quý vị không hiểu quyết định này, hãy liên lạc với Ban Kháng Cáo Việc Làm ngay lập tức. Nếu quý vị không đồng ý với quyết định này, quý vị có thể nộp Đơn Xin Tái Xét Tư Pháp với Tòa Kháng Cáo Oregon theo các hướng dẫn được viết ra ở cuối quyết định này.

Spanish

Atención – Esta decisión afecta sus beneficios de desempleo. Si no entiende esta decisión, comuníquese inmediatamente con la Junta de Apelaciones de Empleo. Si no está de acuerdo con esta decisión, puede presentar una Aplicación de Revisión Judicial ante el Tribunal de Apelaciones de Oregon siguiendo las instrucciones escritas al final de la decisión.

Russian

Внимание – Данное решение влияет на ваше пособие по безработице. Если решение Вам непонятно – немедленно обратитесь в Апелляционный Комитет по Трудоустройству. Если Вы не согласны с принятым решением, вы можете подать Ходатайство о Пересмотре Судебного Решения в Апелляционный Суд штата Орегон, следуя инструкциям, описанным в конце решения.

Khmer

ចំណុចសំខាន់ – សេចក្តីសម្រេចនេះមានផលប៉ះពាល់ដល់អត្ថប្រយោជន៍គ្មានការងារធ្វើរបស់លោកអ្នក។ ប្រសិនបើលោកអ្នកមិនយល់អំពីសេចក្តីសម្រេចនេះ សូមទាក់ទងគណៈកម្មការឧទ្ធរណ៍ការងារភ្លាមៗ។ ប្រសិនបើលោកអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រេចនេះទេ លោកអ្នកអាចដាក់ពាក្យប្តឹងសុំឲ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

Laotian

ເອົາໃຈໃສ່ – ຄຳຕັດສິນນີ້ມີຜົນກະທົບຕໍ່ກັບເງິນຊ່ວຍເຫຼືອການຫວ່າງງານຂອງທ່ານ. ຖ້າທ່ານບໍ່ເຂົ້າໃຈຄຳຕັດສິນນີ້, ກະລຸນາຕິດຕໍ່ຫາຄະນະກຳມະການອຸທອນການຈ້າງງານໃນທັນທີ. ຖ້າທ່ານບໍ່ເຫັນດີນຳຄຳຕັດສິນນີ້, ທ່ານສາມາດຍື່ນຄຳຮ້ອງຂໍການທົບທວນຄຳຕັດສິນນຳສານອຸທອນລັດ Oregon ໄດ້ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

Arabic

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فوراً، و إذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للمراجعة القانونية بمحكمة الإستئناف بأوريغون و ذلك بإتباع الإرشادات المدرجة أسفل القرار.

Farsi

توجه - این حکم بر مزایای بیکاری شما تاثیر می گذارد. اگر با این تصمیم موافق نیستید، بلافاصله با هیأت فرجام خواهی استخدام تماس بگیرید. اگر از این حکم رضایت ندارید، می‌توانید با استفاده از دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.