

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0767

Reversed
Late Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On February 10, 2021, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was not entitled to PUA benefits effective February 2, 2020. On March 2, 2021, the February 10, 2021 PUA determination became final without claimant having filed a request for hearing. On August 17, 2021, claimant filed a late request for hearing on the February 10, 2021 PUA determination. ALJ Kangas considered claimant's request, and on December 21, 2021 issued Order No. 21-UI-182333, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by January 4, 2022. On January 4, 2022, claimant filed a timely response to the appellant questionnaire. On April 26, 2022, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 21-UI-182333 was vacated and that a hearing would be scheduled to determine whether claimant had good cause to file the late request for hearing and, if so, the merits of the February 10, 2021 PUA determination. On December 14, 2022, ALJ Frank conducted a hearing, and on December 22, 2022 issued Order No. 22-UI-210790, concluding that claimant did not show good cause for filing the request for hearing late, dismissing claimant's late request for hearing, and leaving the February 10, 2021 PUA determination undisturbed. On January 11, 2023, claimant filed an application for review of Order No. 22-UI-210790 with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On February 10, 2021, the Department mailed the February 10, 2021 PUA determination to claimant's address on file with the Department. The February 10, 2021 PUA determination stated, "You have the right to appeal this decision if you do not believe it is correct. Your request for appeal must be received by March 2, 2021." Exhibit 1 at 2.

(2) Claimant was claiming benefits around the time that the Department issued the February 10, 2021 PUA determination.

(3) At the time that the February 10, 2021 PUA determination was mailed, claimant was experiencing homelessness. His address on file with the Department, which was his brother's home address, was "correct," although claimant was not residing there at the time. Exhibit 3 at 1. Claimant had been "temporarily" staying at his brother's home prior to that date, but "ended up leaving" due to "financial difficulties and not being able to pay rent to [claimant's sister-in-law]." Exhibit 3 at 4. Although claimant's brother and sister-in-law continued to receive mail on claimant's behalf, claimant never received a copy of the February 10, 2021 PUA determination because claimant's brother misplaced claimant's mail.

(4) On or around August 8, 2021, claimant contacted the Department. At that point, he first learned of the February 10, 2021 PUA determination, as the Department representative he spoke to informed him of the decision. The Department did not provide claimant with a copy of the February 10, 2021 PUA determination at that time. On August 17, 2021, claimant filed a late request for hearing on the February 10, 2021 PUA determination.

CONCLUSIONS AND REASONS: Order No. 22-UI-210790 is reversed and this matter remanded for a hearing on the merits of the February 10, 2021 PUA determination.

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 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.

The request for hearing on the February 10, 2021 PUA determination was due by March 2, 2021. Because claimant did not file his request for hearing until August 17, 2021, the request was late. The order under review concluded that claimant did not have good cause to file the late request for hearing, in part, "because he was no longer living at the residence to which it was sent," implicating OAR 471-040-0010(1)(b)(A). Order No. 22-UI-210790 at 3. However, in light of claimant's circumstances, reliance on this provision of the rule is misplaced. In his appellant questionnaire response, claimant indicated that his address of record—his brother's home—was "correct" at the time. Exhibit 3 at 1. The record fails to show that claimant had any other, better address to which the February 10, 2021 PUA determination should have been mailed. Rather, claimant became homeless after leaving his brother's home, but continued to use his brother's address to receive mail. Therefore, claimant did not fail to receive the February 10, 2021 PUA determination due to his failure to notify the Department of an address change. Instead, claimant's failure to receive the decision was caused by his brother having misplaced claimant's mail while claimant was homeless. As such, claimant failed to file a timely request for hearing due to factors beyond his reasonable control.

Further, those factors did not immediately cease once claimant became aware of the February 10, 2021 PUA determination. On or around August 8, 2021, claimant spoke to a Department representative, and at that point first learned of the existence of the February 10, 2021 PUA determination. However, the record does not indicate that claimant was informed of the applicable appeal deadlines or how to appeal

the decision at the time that he spoke to the Department representative. In his appellant questionnaire response, claimant stated that when he spoke to the Department that day, he was told that there “had been a decision and [he] needed to request for a hearing.” Exhibit 3 at 1. Claimant further explained that he “was not aware of any deadlines due to the fact that [he] had not received [his] denial letter.” Exhibit 3 at 1. Given these statements, it is reasonable to conclude that claimant neither knew nor had reason to know *when* he was required to request a hearing at the time that he spoke to the Department. Therefore, the factors which prevented claimant from filing a request for hearing on the February 10, 2021 PUA determination did not cease until he actually filed the request. As that request was filed on the same day the factors ceased, claimant filed the late request for hearing within the seven-day “reasonable time” period, and claimant therefore had good cause to file the late request for hearing.

For the above reasons, claimant had good cause for failing to file a timely request for hearing, and filed his late request for hearing within a reasonable time. Claimant’s late request for hearing on the February 10, 2021 PUA determination therefore is allowed, and claimant is entitled to a hearing on the merits of that decision.

DECISION: Order No. 22-UI-210790 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: July 26, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-210790 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter 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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