

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0770

Late Application for Review Allowed
Reversed & Remanded

PROCEDURAL HISTORY: On April 8, 2022, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding claimant was ineligible for PUA benefits effective February 16, 2020. On April 28, 2022, the April 8, 2022 PUA determination became final without claimant having filed a request for hearing. On May 12, 2022, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on August 30, 2022 issued Order No. 22-UI-201634, dismissing claimant's late request for hearing, subject to claimant's right to renew the request by responding to an appellant questionnaire by September 13, 2022.

On September 19, 2022, Order No. 22-UI-201634 became final without claimant having filed an appellant questionnaire response or application for review with the Employment Appeals Board (EAB). On December 12, 2022, claimant filed a late response to the appellant questionnaire. On January 11, 2023, ALJ Kangas mailed a letter to claimant stating that because the appellant questionnaire response was late, it would not be considered and another order would not be issued. On July 11, 2023, claimant filed a late application for review of Order No. 22-UI-201634 with EAB.

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 explanation regarding the late application for review and supporting documents, which has been marked as EAB Exhibit 1, and claimant's response to the appellant questionnaire, which has been marked as EAB Exhibit 2. Copies of EAB Exhibits 1 and 2 have been provided to the parties with this decision. Any party that objects to our admitting EAB Exhibits 1 and 2 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 exhibits will remain in the record.

FINDINGS OF FACT: (1) On April 8, 2022, the Department mailed the April 8, 2022 PUA determination to claimant's address of record on file with the Department.

(2) From April 6, 2022 through April 11, 2022, claimant or his father contacted the Department several times seeking payment of the unpaid weeks of claimant's claim.¹ On April 11, 2022, the Department noted that claimant's father came to a WorkSource office and later that day spoke with a representative on the phone. The Department's notes stated that the phone representative spoke with claimant's father about the April 8, 2022 PUA determination. Claimant's father also updated the email address on the claim during these interactions. The Department's notes do not show that an additional copy of the April 8, 2022 PUA determination was requested by or sent to claimant or his father prior to the late request for hearing being filed.²

(3) On April 13, 2022, claimant updated his mailing address with the Department.³

(4) On May 12, 2022, claimant filed a late request for hearing on the April 8, 2022 PUA determination.

(5) On August 20, 2022, the Office of Administrative Hearings (OAH) mailed Order No. 22-UI-201634 to claimant's address of record. Claimant did not immediately receive Order No. 22-UI-201634.

(6) On November 14, 2022, claimant, through his father, inquired about the status of his request for hearing. OAH mailed an additional copy of Order No. 22-UI-201634 to claimant, which he received in November 2022.

(7) On December 12, 2022, claimant filed a response to the appellant questionnaire. ALJ Kangas replied via letter on January 11, 2023 that the response would not be considered because it was late.

(8) On January 27, 2023, claimant's father emailed OAH to inquire about ALJ Kangas's response. Claimant was advised only to "send to us a written request to reopen the case, explaining why the response to the [appellant questionnaire] was sent in past the deadline." EAB Exhibit 1 at 4. OAH did not advise claimant to file an application for review with EAB at that time.

(9) On February 17, 2023, claimant's father responded in an email that "the reason I never received anything is because my mail has been being stolen[.]" EAB Exhibit 1 at 4.

¹ The Department's records show that claimant was 14 years old on the effective date of his PUA claim, and he therefore authorized the Department to communicate with his father, who has the same name as claimant, and allowed his father to act on his behalf regarding the claim. Because of this, it is difficult to distinguish whether the Department and OAH were communicating with claimant as opposed to his father on some occasions referenced in this decision.

² EAB has taken notice of these facts, which are contained in Employment Department records. OAR 471-041-0090(1). Any party that objects to our taking notice of this information 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 noticed facts will remain in the record.

³ EAB has taken notice of this fact, which is contained in Employment Department records. OAR 471-041-0090(1). Any party that objects to our taking notice of this information 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 noticed fact will remain in the record.

(10) On February 27, 2023, claimant or his father spoke with an OAH representative and was told that an application for review “was sent to EAB” on that date. EAB Exhibit 1 at 2. EAB did not receive this application for review.

(11) On July 11, 2023, claimant or his father contacted OAH and was advised to file an application for review with EAB. Claimant filed his late application for review with EAB that day.

CONCLUSIONS AND REASONS: Claimant’s late application for review is allowed. Order No. 22-UI-201634 is set aside and the matter remanded for a hearing to determine whether to allow claimant’s late request for hearing and, if so, the merits of the April 8, 2022 PUA determination.

Late application for review. An application for review is timely if it is filed within 20 days of the date that the Office of Administrative Hearings (OAH) mailed the order for which review is sought. ORS 657.270(6); OAR 471-041-0070(1) (May 13, 2019). The 20-day filing period may be extended a “reasonable time” upon a showing of “good cause.” ORS 657.875; OAR 471-041-0070(2). “Good cause” means that factors or circumstances beyond the applicant’s reasonable control prevented timely filing. OAR 471-041-0070(2)(a). A “reasonable time” is seven days after the circumstances that prevented the timely filing ceased to exist. OAR 471-041-0070(2)(b). A late application for review will be dismissed unless it includes a written statement describing the circumstances that prevented a timely filing. OAR 471-041-0070(3).

The application for review of Order No. 22-UI-201634 was due by September 19, 2022. Because claimant did not file his application for review until July 11, 2023, the application for review was late. Claimant stated in the explanation that was part of his late application for review that he did not receive Order No. 22-UI-201634 when it was originally mailed, and suggested this was likely due to mail theft. EAB Exhibit 1 at 1. Therefore, more likely than not, claimant did not timely receive Order No. 22-UI-201634, and this constituted a factor or circumstance outside claimant’s reasonable control that prevented timely filing of his application for review.

The record further shows that claimant received a copy of Order No. 22-UI-201634 in November 2022. Claimant’s appellant questionnaire response, received by OAH on December 12, 2022, was written on the appellant questionnaire attached to the November 2022 copy of Order No. 22-UI-201634. EAB Exhibit 2 at 1. In it, claimant wrote in response to a question about his late request for hearing on the April 8, 2022 PUA determination, “I just now received it in the month of November,” although he elsewhere stated he never received the April 8, 2022 PUA determination. EAB Exhibit 2 at 2-3. Because claimant had filed his late request for hearing on the April 8, 2022 PUA determination on May 12, 2022, it can be inferred that claimant was referring to the November 2022 copy of Order No. 22-UI-201634 as being received in November 2022, rather than the April 8, 2022 PUA determination. Therefore, more likely than not, claimant received a copy of Order No. 22-UI-201634 by the end of November 2022.

However, even though claimant had received a copy of Order No. 22-UI-201634 by the end of November 2022, the factor or circumstance that prevented timely filing did not cease at that time. While Order No. 22-UI-201634 advised claimant of his appellate rights and the deadline for a timely appeal, that deadline had passed by the time claimant received a copy of Order No. 22-UI-201634. Order No. 22-UI-201634 did not explain the procedure or time constraints involved with filing a late application for review. Rather than filing a late application for review, claimant filed a late response to the appellant

questionnaire on December 12, 2022. Under the circumstances, it is understandable that claimant pursued this course of action rather than filing a late application for review. The record does not demonstrate that claimant was aware of his right to file a late application for review until at least February 27, 2023.

On February 27, 2023, an OAH representative made notes showing that they told claimant or his father that an application for review of Order No. 22-UI-201634 was being sent to EAB that day. EAB did not receive this application for review. Though the original factor that delayed the filing of claimant's application for review may have ceased with claimant's attempt to file a late application for review, the additional factor beyond claimant's reasonable control — EAB not receiving the February 27, 2023 application for review — continued to delay claimant's filing of the application for review. It can be inferred from the record that claimant was unaware that EAB had not received any application for review until July 11, 2023, when he or his father was told this information by an OAH representative. All of the factors that prevented claimant from filing his application for review therefore ceased on July 11, 2023, and claimant has shown good cause to extend the deadline for timely filing to this date. Claimant filed his late application for review on July 11, 2023, and therefore within a "reasonable time" of the factors ceasing. Accordingly, claimant's late application for review is allowed.

Late request for hearing. 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. Good cause does not include failure to receive a document due to not notifying the Employment Department or Office of Administrative Hearings of an updated address while the person is claiming benefits or if the person knows, or reasonably should know, of a pending appeal. OAR 471-040-0010(1)(b)(A).

The deadline to file a timely request for hearing on the April 8, 2022 PUA determination was April 28, 2022. Claimant filed his request for on May 12, 2022, and it therefore was late. However, the record suggests claimant may have been prevented from timely filing his request for hearing by factors beyond his reasonable control.

Claimant wrote in his appellant questionnaire response that he did not remember when he received the April 8, 2022 PUA determination or when he filed his request for hearing on it. EAB Exhibit 2 at 2. He wrote that his request for hearing was filed late "because I never received the letter at all." EAB Exhibit 2 at 3. Claimant asserted in other documents that he was a victim of mail theft, and submitted a photo of an undated and unaddressed form letter from the Postal Service stating that stolen items of mail were being returned to the recipient of the letter. EAB Exhibit 1 at 6. Claimant has not asserted that the April 8, 2022 PUA determination was one of the stolen items returned with this letter. Nonetheless, if claimant did not timely receive the April 8, 2022 PUA determination because it was stolen from his mailbox, this may have constituted a factor beyond claimant's reasonable control that prevented timely filing of the request for hearing.

In the alternative, the record suggests that the April 8, 2022 PUA determination may not have been delivered due to claimant moving and not updating his address on file with the Department, as claimant

updated his mailing address on file with the Department on April 13, 2022, five days after the April 8, 2022 PUA determination was mailed. Because the Department's records show that claimant was actively seeking payment of benefits for weeks previously claimed in the days leading up to the issuance of the April 8, 2022 PUA determination, this may not have constituted good cause to file the request for hearing late pursuant to OAR 471-040-0010(1)(b)(A).

Additional development of the record is needed to determine whether factors beyond claimant's reasonable control or an excusable mistake prevented timely filing of his request for hearing. Therefore, on remand, inquiry should be made into when, if at all, claimant received the April 8, 2022 PUA determination, or learned of its existence and appeal rights therefrom; what may have prevented claimant from receiving the April 8, 2022 PUA determination in the mail if he did not receive it; when claimant moved from the address to which the April 8, 2022 PUA determination was mailed; whether claimant was claiming benefits or had an appeal pending at the time of the move, and whether claimant updated his address with the Department at that time; what prompted claimant or his father to contact the department on April 11, 2022, if it was not receipt of the April 8, 2022 PUA determination; why claimant or his father did not request a copy of the April 8, 2022 PUA determination after learning about its existence on April 11, 2022, if they had not already received a copy; what prompted claimant to file the late request for hearing on May 12, 2022; and whether any other factors or circumstances prevented timely filing of the request for hearing.

If, on remand, claimant has shown good cause to extend the deadline for timely filing, inquiry should be made into whether claimant's late request for hearing was filed within a reasonable time after any factors that prevented timely filing ceased. The record suggests that on April 11, 2022, at least one Department representative told claimant or his father, in response to their inquiries that day, that the April 8, 2022 PUA determination had been issued, and explained to them the substance of that decision. The inquiry should therefore include whether any factors preventing timely filing ceased on April 11, 2022, or later, if claimant or his father became aware of the April 8, 2022 PUA determination and claimant's appeal rights therefrom, either through receiving the April 8, 2022 PUA determination or as a result of claimant's or his father's interactions with the Department on April 11, 2022.

For these reasons, claimant's late application for review is allowed. Order No. 22-UI-201634 is reversed and the matter remanded for a hearing to determine whether claimant had good cause to file his request for hearing late and, if so, the merits of the April 8, 2022 PUA determination.

DECISION: Order No. 22-UI-201634 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: August 29, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-201634 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
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