

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0867**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On May 28, 2021, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was ineligible to receive PUA benefits for the week of November 29, 2020 through December 5, 2020 (week 49-20) because claimant was not able to work or available for work that week. On June 17, 2021, the May 28, 2021 PUA determination became final without claimant having filed a request for hearing. On February 5, 2022, claimant filed a late request for hearing on the May 28, 2021 PUA determination.<sup>1</sup> ALJ Kangas considered claimant's request, and on May 9, 2022 issued Order No. 22-UI-193203, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by May 23, 2022. On May 24, 2022, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 22-UI-193203 with the Employment Appeals Board (EAB). On August 13, 2023, ALJ Kangas mailed a letter to claimant stating that because the appellant questionnaire response was late, it would not be considered and a new order would not be issued. This matter comes before EAB based upon claimant's May 24, 2022 application for review of Order No. 22-UI-193203.

**EVIDENTIARY MATTER:** EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is the response to the appellant questionnaire, and has been 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 will remain in the record.

<sup>1</sup> As explained later in this decision, the Office of Administrative Hearings (OAH) processed claimant's February 5, 2022 filing as a late request for hearing on the May 28, 2021 PUA determination and a timely request for hearing on a later, unrelated PUA determination; the request did not specify that it was intended to apply to either of these determinations.

**WRITTEN ARGUMENT:** EAB considered claimant’s written argument, which was contained in their August 31, 2022 filing.<sup>2</sup>

**FINDINGS OF FACT:** (1) On May 28, 2021, the Department mailed the May 28, 2021 PUA determination to claimant’s address of record on file with the Department. The May 28, 2021 PUA determination concluded that claimant was ineligible to receive PUA benefits for week 49-20 because claimant was not able to work or available for work that week.

(2) On December 30, 2021, claimant contacted the Department by phone and certified to a representative that they were able to work and available for work during week 49-20. The Department accepted claimant’s certification and allowed claimant benefits for week 49-20 by paying those benefits on January 3, 2022.<sup>3</sup>

(3) On January 19, 2022, the Department issued a Notice of Determination for PUA that concluded claimant was ineligible to receive benefits for the week of September 29, 2021 through October 4, 2021 (week 35-21).<sup>4</sup>

(4) On February 5, 2022, claimant filed a request for hearing “for denial made on May 20, 2020.” Exhibit 2 at 2. OAH processed this as a timely request for hearing on the January 19, 2022 PUA determination and a late request for hearing on the May 28, 2021 PUA Determination.<sup>5</sup>

(5) On May 9, 2022, Order No. 22-UI-193203 was issued, dismissing claimant’s February 5, 2022 request for hearing as to the May 28, 2021 PUA determination, and stating that the May 28, 2021 PUA determination “remains undisturbed.” Order No. 22-UI-193203 at 2.

(6) On August 3, 2022, the Department issued an administrative decision alleging that claimant was not entitled to the benefits the Department paid claimant for week 49-20 and assessing an overpayment in that amount.<sup>6</sup>

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<sup>2</sup> This document was filed as a “Late Application For Review” with EAB. However, as claimant already filed a timely application for review of Order No. 22-UI-193203, the statements contained within the document were considered written argument.

<sup>3</sup> 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 fact will remain in the record.

<sup>4</sup> 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 fact will remain in the record.

<sup>5</sup> 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 fact will remain in the record.

**CONCLUSIONS AND REASONS:** Order No. 22-UI-193203 is reversed and the matter remanded for further proceedings.

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.

ORS 657.267 provides, in relevant part:

(1) An authorized representative shall promptly examine each claim for waiting week credit or for benefits and, on the basis of the facts available, make a decision to allow or deny the claim. Information furnished by the claimant, the employer or the employer's agents on forms provided by the Employment Department pursuant to the authorized representative's examination must be accompanied by a signed statement that such information is true and correct to the best of the individual's knowledge. Notice of the decision need not be given to the claimant if the claim is allowed but, if the claim is denied, written notice must be given to the claimant. If the claim is denied, the written notice must include a statement of the reasons for denial, and if the claim is denied under any provision of ORS 657.176, the notice must also set forth the specific material facts obtained from the employer and the employer's agents that are used by the authorized representative to support the reasons of the denial. The written notice must state the reasons for the decision.

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ORS 657.290 provides:

(1) The Director of the Employment Department, upon motion of the director or upon application of any party to a claim for benefits, may at any time reconsider any final decision under this chapter. Reconsideration may occur when there is evidence of:

- (a) Errors of computation;
- (b) Clerical errors;
- (c) Misinformation provided a party by the Employment Department;
- (d) Facts not previously known to the department; or
- (e) Errors caused by misapplication of law by the department.

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<sup>6</sup> As claimant's written argument expressed disagreement with the overpayment assessed in the August 3, 2022 administrative decision, but Department records do not show a request for hearing has been filed on that decision, claimant may wish to inquire with OAH or the Department regarding any request for hearing on that matter.

(2) Such reconsideration shall be accomplished by the director or any employee the director may designate for the purpose, in accordance with such regulations as the director may prescribe, and may include the making of a new decision which, if made, shall award, deny, terminate, continue, increase or decrease benefits to the extent found necessary and appropriate for the correction of previous error respecting such benefits. However, any such new decision shall be subject to hearing, review and appeal in accordance with ORS 657.265, 657.266 to 657.269 and 657.270 to 657.282.

The May 28, 2021 PUA determination became final, without claimant having requested a hearing, on June 17, 2021. Claimant filed a request for hearing on February 5, 2022, which was therefore late as to the May 28, 2021 PUA determination.<sup>7</sup> The Department's notes of a December 30, 2021 phone call from claimant suggest that claimant provided facts during the call that were previously unknown to the Department. Specifically, claimant stated that they were able and available to work during the week of November 29, 2020 through December 5, 2020 (week 49-20) and that they had answered questions incorrectly about their ability and availability to work during that week on their weekly PUA claim. Based on this new information, the Department's notes suggest that the May 28, 2021 PUA determination was reconsidered under the authority of ORS 657.290(1)(d), and a new decision issued pursuant to ORS 657.290(2) on January 3, 2022, allowing claimant PUA benefits for week 49-20 because they were able and available to work that week. Such a decision is valid even if a new written Notice of Determination of PUA was not issued to claimant reflecting that decision, as ORS 657.267(1) permits decisions *allowing* the payment of benefits on a weekly claim to be made without written notice to a claimant. If, as the Department's records suggest, the May 28, 2021 PUA determination was reconsidered after it became final, and a new decision was made to allow payment of benefits for week 49-20, any subsequent request for hearing on the May 28, 2021 PUA determination would have been subject to dismissal as moot, leaving the decision *allowing* benefits undisturbed.

Therefore, on remand, the ALJ should inquire into whether the Department reconsidered the May 28, 2021 PUA determination after it became final by issuing payment for week 49-20. If such a decision allowing benefits became final without further amendment or reconsideration by the Department, the ALJ's order on remand should reflect that the May 28, 2021 PUA determination was reversed by the Department, and the ALJ should determine whether claimant's February 5, 2022 request for hearing is therefore subject to dismissal as to the May 28, 2021 PUA determination for being moot.<sup>8</sup>

However, if the May 28, 2021 PUA determination is found to be valid and in effect on remand, inquiry should be made into when and if claimant received the May 28, 2021 PUA determination, or otherwise learned of its existence and claimant's appeal rights therefrom, and what factors, if any, prevented claimant from filing a timely request for hearing on that determination. Inquiry should also be made into when any factors that prevented timely filing ceased, particularly given the information provided to

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<sup>7</sup> As the record suggests that as of February 5, 2022, claimant was allowed benefits for week 49-20, and as claimant's February 5, 2022 filing did not state or imply that claimant was requesting a hearing on the May 28, 2021 PUA determination, it is likely claimant did not intend that filing to be a late request for hearing on the May 28, 2021 PUA determination. In fact, it appears that it was *because* OAH treated this filing as a late request for hearing on the May 28, 2021 PUA determination and issued Order No. 22-UI-193203 that the department later assessed an overpayment for week 49-20 based on the potentially erroneous conclusion by the Department that the May 28, 2021 PUA determination was still valid and could therefore remain "undisturbed" by Order No. 22-UI-193203.

claimant during the December 30, 2021 call by the Department that may have suggested to claimant that the May 28, 2021 PUA determination had been reconsidered and was no longer valid.

For these reasons, Order No. 22-UI-193203 is set aside and the matter remanded for a hearing on whether the May 21, 2021 PUA determination is currently valid and, if so, whether claimant had good cause to file a late request for hearing on the May 21, 2021 PUA determination and, if so, the merits of the May 21, 2021 PUA determination.

**DECISION:** Order No. 22-UI-193203 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service:** August 16, 2023

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-193203 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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