

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0873

Application for Review Dismissed
No Justiciable Controversy

PROCEDURAL HISTORY AND FINDINGS OF FACT: On October 14, 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 effective March 8, 2020.¹ On November 3, 2021, the October 14, 2021 PUA determination became final without claimant having requested a hearing. On November 29, 2021, claimant filed a late request for hearing on the October 14, 2021 PUA determination. ALJ Kangas considered claimant's request, and on February 23, 2022 issued Order No. 22-UI-187120, dismissing claimant's request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by March 9, 2022. On March 8, 2022, claimant filed a timely response to the appellant questionnaire. On June 10, 2022, the Office of Administrative Hearings (OAH) mailed a letter to claimant stating that Order No. 22-UI-187120 was vacated and that a hearing would be scheduled to determine whether claimant had good cause to file her request for hearing late and, if so, the merits of the October 14, 2021 PUA determination.

On February 13, 2023, ALJ Wardlow conducted a hearing, and on February 14, 2023 issued Order No. 23-UI-215942, allowing claimant's late request for hearing and reversing the October 14, 2021 PUA determination by concluding that the Department had reconsidered the October 14, 2021 PUA determination by allowing claimant benefits for the weeks of March 8, 2020 through April 25, 2020 (weeks 11-20 through 17-20), and May 10, 2020 through June 6, 2020 (weeks 20-20 through 23-20).²

¹ The PUA determination stated that claimant was ineligible to receive PUA benefits because "[t]he weeks claimed were not directly affected by the COVID-19 pandemic." Exhibit 1 at 1.

² Although the Department's representative testified that no written PUA determination was issued amending the October 14, 2021 PUA determination, it appears that the Department reconsidered the October 14, 2021 PUA determination pursuant to ORS 657.290, by paying weekly claims, after that determination became final. Audio Record at 35:25 to 36:01; *See* ORS 657.267(1), which provides, "Notice of the decision [to allow or deny a claim] need not be given to the claimant if the claim is allowed[.]" As Order No. 23-UI-215942 did not assess whether claimant was "directly affected by the COVID-19 pandemic," it can be inferred that the ALJ concluded the October 14, 2021 PUA determination had been reconsidered by the Department pursuant to ORS 657.290, was therefore no longer in effect, and reversal of the October 14, 2021 PUA

On February 24, 2023, claimant filed an application for review of Order No. 23-UI-215942 with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant’s argument in reaching this decision. The argument pertained to other administrative decisions denying claimant PUA benefits for reasons unrelated to the October 14, 2021 administrative decision.³ Claimant’s Written Argument at 1-2.

CONCLUSIONS AND REASONS: Claimant’s application for review of Order No. 23-UI-215942 presents no justiciable controversy and is dismissed.

On February 24, 2023, claimant filed with EAB an application for review of Order No. 23-UI-215942, which allowed claimant’s late request for hearing and concluded that claimant was eligible for PUA benefits because the Department had reconsidered the October 14, 2021 PUA determination, rendering it moot. Claimant did not assign error to any portion of Order No. 23-UI-215942, did not request reversal of any portion of Order No. 23-UI-215942, and alleged no facts entitling her to further relief in this matter. Accordingly, there is no justiciable controversy before EAB based upon claimant’s application for review of Order No. 23-UI-215942. *See accord Barcik v. Kubiacyk*, 321 Or 174, 895 P2d 765 (1995). Because this case before EAB presents no justiciable controversy, the application for review of Order No. 23-UI-215942 is dismissed and the order remains undisturbed.

DECISION: The application for review filed February 24, 2023 is dismissed. Order No. 23-UI-215942 remains undisturbed.

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

DATE of Service: August 22, 2023

NOTE: You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at courts.oregon.gov. Once on the website, use the ‘search’ function to search for ‘petition for judicial review employment appeals board’. A link to the forms and information will be among the search results.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.

determination was required in order to leave the department’s subsequent decision allowing benefits in regard to that issue undisturbed.

³ The Department’s reconsidered decision on whether claimant was “directly affected by the COVID-19 pandemic” as necessary to meet PUA eligibility requirements did not preclude the possibility of the Department issuing additional PUA determinations concluding that claimant was ineligible for PUA benefits for other reasons. A claimant must meet all eligibility requirements in order to receive benefits.



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
www.Oregon.gov/Employ/eab

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.