

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0983

Reversed & Remanded

PROCEDURAL HISTORY: On June 17, 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 December 27, 2020. On July 7, 2021, the June 17, 2021 PUA determination became final without claimant having filed a request for hearing. On November 10, 2022, the Department served notice of an administrative decision, based in part on the June 17, 2021 PUA determination, concluding that claimant received benefits to which they were not entitled and assessing an overpayment of \$2,050 in PUA benefits and \$3,000 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay to the Department (decision # 160749). On November 30, 2022, decision # 160749 became final without claimant having filed a request for hearing.

On December 2, 2022, claimant filed late requests for hearing on the June 17, 2021 PUA determination and decision # 160749. ALJ Kangas considered claimant's requests, and on April 4, 2023 issued Orders No. 23-UI-220979 and 23-UI-220978, dismissing the requests as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by April 18, 2023. On April 23, 2023, claimant filed timely applications for review of Orders No. 23-UI-220979 and 23-UI-220978 with the Employment Appeals Board (EAB), which included a statement as to why claimant's requests for hearing were filed late, but did not file a response to the appellant questionnaire. On August 30, 2023, ALJ Kangas mailed letters to claimant stating that because claimant did not timely respond to the appellant questionnaire, her statement regarding the late requests for hearing would not be considered and new orders would not be issued. These matters come before EAB based upon claimant's applications for review of Orders No. 23-UI-220979 and 23-UI-220978.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-220979 and 23-UI-220978. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2023-EAB-0984 and 2023-EAB-0983).

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of the statement enclosed with claimant's applications for review, 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.

Claimant also attached to the applications for review new information that was not relevant to EAB's consideration of whether claimant had good cause to file their late requests for hearing. EAB therefore did not consider the new information in reaching this decision under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019). However, this information may be relevant to the merits of the administrative decisions on which claimant filed their late requests for hearing. The parties may offer new information such as this into evidence at the remand hearing. At that time, it will be determined if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing regarding documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties in advance of the hearing at their addresses as shown on the certificate of mailing for the notice of hearing.

FINDINGS OF FACT: (1) On June 17, 2021, the June 17, 2021 PUA determination was mailed to claimant's address of record on file with the Department. It 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 July 7, 2021." Order No. 23-UI-22979 Exhibit 1 at 2.

(2) On November 10, 2022, decision # 160749 was mailed to claimant's address of record on file with the Department. It stated, "[Y]ou have the right to appeal this decision. Any appeal from this decision must be filed on or before November 30, 2022 to be timely." Order No. 23-UI-220978 Exhibit 1 at 2.

CONCLUSIONS AND REASONS: Orders No. 23-UI-220979 and 23-UI-220978 are set aside and these matters remanded for hearings on whether claimant's late requests for hearing on the June 17, 2021 PUA determination and decision # 160749 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)(a)(A), "good cause" includes "[f]ailure to receive a document because the Employment Department or Office of Administrative hearings mailed it to an incorrect address despite having the correct address." Under OAR 471-040-0010(1)(b)(A), "good cause" does *not* include "[f]ailure 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."

The deadline to file a timely request for hearing on the June 17, 2021 PUA determination was July 7, 2021. The deadline to file a timely request for hearing on decision # 160749 was November 30, 2022.

Claimant filed their requests for hearing on December 2, 2022. Therefore, the requests for hearing were late. However, claimant may have had good cause to file their requests for hearing late.

In the statement enclosed with the application for review, claimant stated, “I was out of state as a full time student and did not receive any documents until I came home to visit. I am currently in the process of moving back to Oregon, and I will be done as of 5-1-2023.” EAB Exhibit 1 at 1. This statement suggests that claimant may have been prevented from timely filing their requests for hearing as a result of the administrative decisions being mailed to an address where claimant was not living at the time. It is not clear from claimant’s statements when or if they received each of the administrative decisions, or what prompted claimant to file their requests for hearing when they did. It is also unclear whether the Department’s address for claimant was incorrect, or if claimant moved without updating their address and, if so, whether they were claiming benefits at the time, or knew or should have known of a pending appeal. On remand, the ALJ should develop the record to clarify these circumstances to determine whether claimant had good cause to file the late requests for hearing and, if so, whether they did so within a “reasonable time.”

Orders No. 23-UI-220979 and 23-UI-220978 are therefore reversed, and these matters remanded for hearings on whether claimant’s late requests for hearing on the June 17, 2021 PUA determination or decision # 160749 should be allowed and, if so, the merits of those decisions.

DECISION: Orders No. 23-UI-220979 and 23-UI-220978 are set aside, and these matters remanded for further proceedings consistent with this order.

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

DATE of Service: September 13, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 23-UI-220978 and 23-UI-220979 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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