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State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0988

Reversed
Late Requests for Hearing Allowed
Merits Hearings Required

PROCEDURAL HISTORY AND FINDINGS OF FACT: On January 31, 2022, 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 December 27, 2020. On February 22, 2022, the January 31, 2022 PUA determination became final without claimant having filed a request for hearing. On September 8, 2022, the Department served notice of an administrative decision based in part on the January 31, 2022 PUA determination, concluding that claimant received \$2,870 in PUA and \$4,200 in Federal Pandemic Unemployment Compensation (FPUC) benefits to which they were not entitled must repay (decision # 113416).¹ On September 28, 2022, decision # 113416 became final without claimant having filed a request for hearing.

On November 18, 2022, claimant filed late requests for hearing on the January 31, 2022 PUA determination and decision # 113416. ALJ Kangas considered claimant's requests, and on April 20, 2023 issued Orders No. 23-UI-222652 and 23-UI-222701, dismissing claimant's requests for hearing as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by May 4, 2023. On May 10, 2023, claimant filed a late response to the appellant questionnaire and timely applications for review of Orders No. 23-UI-222652 and 23-UI-222701 with the Employment Appeals Board (EAB). On August 30, 2023, ALJ Kangas mailed letters stating that the Office of Administrative Hearings (OAH) would not consider claimant's questionnaire response or issue additional orders regarding either matter because the questionnaire response was late. These matters come before EAB based upon claimant's May 10, 2023 applications for review of Orders No. 23-UI-222652 and 23-UI-222701.

¹ On December 21, 2022, the Department issued a corrected version of decision # 113416 that corrected the date decision # 113416 listed for the January 31, 2022 PUA Determination, from March 22, 2020 to the correct date of January 31, 2022.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-222652 and 23-UI-222701. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2023-EAB-0988 and 2023-EAB-0989).

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 response to the appellant questionnaire, 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.

CONCLUSIONS AND REASONS: Orders No. 23-UI-222652 and 23-UI-222701 are reversed. Claimant's late requests for hearing on the January 31, 2022 PUA Determination and decision # 113416 are allowed, and hearings on the merits of the January 31, 2022 PUA Determination and decision # 113416 are required.

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.

The deadline to file a timely request for hearing on the January 31, 2022 PUA Determination was February 22, 2022. The deadline to file a timely request for hearing on decision # 113416 was September 28, 2022. Claimant filed their requests for hearing on November 18, 2022. Therefore, the requests for hearing were late.

In their appellant questionnaire response, claimant stated that they never received either the January 31, 2022 PUA Determination or decision # 113416. EAB Exhibit 1 at 1. Claimant further stated that on November 14, 2022, they received a collections notice, which was the first time that they became aware that the Department viewed them as ineligible for PUA and liable for an overpayment of PUA benefits. EAB Exhibit 1 at 1-2. Claimant filed their requests for hearing four days later, on November 18, 2022. EAB Exhibit 1 at 1.

Claimant established good cause to allow the late requests for hearing on the January 31, 2022 PUA Determination and decision # 113416. Claimant's failure to receive either decision was a circumstance beyond their reasonable control that prevented a timely appeal of both the January 31, 2022 PUA Determination and decision # 113416. That circumstance ceased to exist on November 14, 2022, and claimant filed their requests for hearing four days later, which was within the seven-day "reasonable time." Accordingly, Orders No. 23-UI-222652 and 23-UI-222701 are reversed, claimant's late requests for hearing on the January 31, 2022 PUA determination and decision # 113416 are allowed, and these matters remanded for hearings on the merits of the January 31, 2022 PUA Determination and decision # 113416.

DECISION: Orders No. 23-UI-222652 and 23-UI-222701 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 15, 2023

NOTE: The failure of any party to appear at the hearings on remand will not reinstate Orders No. 23-UI-222652 or 23-UI-222701 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

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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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