

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0990

*Late Applications for Review Allowed
Reversed & Remanded*

PROCEDURAL HISTORY: On December 6, 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 6, 2020. On December 27, 2021, the December 6, 2021 PUA determination became final without claimant having requested a hearing. On August 22, 2022, claimant filed a late request for hearing on the December 6, 2021 PUA determination. ALJ Kangas considered claimant's request, and on December 22, 2022 issued Orders No. 22-UI-210822 and 22-UI-210820, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by January 5, 2023.¹ On January 11, 2023, Orders No. 22-UI-210822 and 22-UI-210820 became final without claimant having filed a response to the appellant questionnaire or applications for review of Orders No. 22-UI-210822 and 22-UI-210820 with the Employment Appeals Board (EAB). On February 3, 2023, claimant filed a late response to the appellant questionnaire and late applications for review of Orders No. 22-UI-210822 and 22-UI-210820. On August 31, 2023, ALJ Kangas mailed letters to claimant stating that because the appellant questionnaire response was late, it would not be considered and new orders would not be issued. These matters come before EAB based upon claimant's February 3, 2023 late applications for review of Orders No. 22-UI-210822 and 22-UI-210820.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 22-UI-210822 and 22-UI-210820. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2023-EAB-0990 and 2023-EAB-0991).

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 claimant's response to the appellant questionnaire and a written statement enclosed with their 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

¹ It is unclear from the record why the Office of Administrative Hearings (OAH) issued two orders, identical in substance, regarding claimant's late request for hearing on the December 6, 2021 PUA determination.

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.

FINDINGS OF FACT: (1) On December 6, 2021, the Department mailed the December 6, 2021 PUA determination to claimant's address of record on file with the Department. The December 6, 2021 PUA determination 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 December 27, 2021." Exhibit 1 at 2. Claimant filed a request for hearing on August 22, 2022.

(2) On December 22, 2022, OAH mailed Orders No. 22-UI-210822 and 22-UI-210820 to claimant's address of record on file with OAH. Each order stated, "You may appeal this decision by filing the attached form Application for Review with the Employment Appeals Board within 20 days of the date that this decision is mailed." Order No. 22-UI-210822 at 2; Order No. 22-UI-210820 at 2. Additionally, each order's Certificate of Mailing stated, "Any party may appeal this Order by filing a Request for Review with the Employment Appeals Board no later than January 11, 2023."

(3) On February 3, 2022, claimant filed applications for review of Orders No. 22-UI-210822 and 22-UI-210820 with EAB, along with a written statement and appellant questionnaire response. In these documents, claimant asserted that they did not receive the December 6, 2021 PUA determination because it was mailed to an address where claimant no longer lived. EAB Exhibit 1 at 2-3. Claimant further stated that they updated their address with the Department when they filed their request for hearing, and that Orders No. 22-UI-210822 and 22-UI-210820 were nonetheless mailed to the previous address, delaying claimant's receipt of them until they were forwarded by a current resident of that address. EAB Exhibit 1 at 4-5.

CONCLUSIONS AND REASONS: Orders No. 22-UI-210822 and 22-UI-210820 are set aside and the matters remanded for a hearing to determine whether to allow claimant's late request for hearing and, if so, the merits of the December 6, 2021 PUA determination.

Late applications 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).

Orders No. 22-UI-210822 and 22-UI-210820 were mailed to claimant on December 22, 2022. The deadline for filing timely applications for review of these orders was January 11, 2023. Claimant filed their applications for review on February 3, 2023.² Therefore, the applications for review were late.

² Claimant's applications for review were sent by private overnight carrier and the envelope did not contain the date it was deposited with the carrier. EAB Exhibit 1 at 6. The envelope was received by EAB on Monday, February 6, 2023. EAB Exhibit 1 at 1. Pursuant to OAR 471-041-0065(1)(c) (May 13, 2019), the filing date of an application for review is "the date that the document is deposited with [a private] carrier, as evidenced by the date affixed to the envelope by that carrier."

In the documents submitted with the applications for review, claimant stated that they updated their address with the Department when filing their request for hearing, yet the orders under review were mailed to a previous address. As a result, claimant did not receive the orders under review until a resident of that previous address forwarded them to claimant. In their written statement dated “1/30/23,” claimant stated that the orders under review were given to claimant “just now.” EAB Exhibit 1 at 4. The Department’s, or OAH’s, failure to update claimant’s address of record when requested, causing the orders under review to be mailed to an address at which claimant no longer lived, constituted factors beyond claimant’s reasonable control that prevented timely filing of claimant’s applications for review. These factors ceased on January 30, 2023, when claimant received the orders under review. Claimant filed their late applications for review on February 3, 2023, and therefore did so within a seven-day “reasonable time” of when the factors that prevented timely filing ceased. Therefore, claimant has shown good cause for filing their applications for review late and the late applications for review are 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(b)(A).

The deadline for filing a request for hearing on the December 6, 2021 PUA determination was December 27, 2021. Claimant’s request for hearing was filed on August 22, 2022. Therefore, the request for hearing was late.

Claimant stated in their appellant questionnaire response that they never received the December 6, 2021 PUA determination, and their written statement suggested that this was due to it being mailed to a previous address. EAB Exhibit 1 at 2-3. The statement also suggests that a current occupant of the house notified claimant at some point that another occupant of the house was withholding mail from claimant rather than forwarding it; and that after claimant learned of this, claimant contacted the Department to update their address and learned during the phone call of the existence of the December 6, 2021 PUA determination. EAB Exhibit 1 at 4. It is therefore possible that claimant was prevented from filing their request for hearing timely due to factors beyond their reasonable control.

On remand, inquiry should be made into when claimant moved from the address to which the December 6, 2021 PUA determination was mailed; whether claimant updated their address at the time of the move; whether claimant was receiving benefits or knew or should have known of an appeal pending as of the time of the move; when claimant discovered that mail from the Department was being withheld from them; when they contacted the Department to update their address and discuss potentially lost mail; and

Further, “[w]here the information specified in section (1) of this rule is missing, unclear, or improbable the filing date is the date that EAB determines to be the most probable date of filing. OAR 471-041-0065(2). As the envelope was sent via overnight carrier and was received February 6, 2023, the most probable date that it was deposited with the carrier was the previous business day, Friday, February 3, 2023. Accordingly, February 3, 2023 is the date of filing.

any other factors that may have prevented timely filing. If good cause is found to extend the deadline for timely filing, further inquiry should be made into whether claimant filed their late request for hearing within seven days of when the factors that prevented timely filing ceased.

For these reasons, Orders No. 22-UI-210822 and 22-UI-210820 are reversed and the matters remanded for a hearing to determine whether claimant had good cause to file their request for hearing late and, if so, the merits of the December 6, 2021 PUA determination.

Note: A hearing is currently scheduled for October 10, 2023 in Case No. 2022-UI-75927 to determine whether there is good cause to reopen a previous hearing claimant requested and, if so, the merits of an administrative decision that, among other conclusions, assessed an overpayment based in part on the December 6, 2021 PUA determination. If possible, OAH should consolidate these matters with that hearing, as the outcome of that hearing may be dependent on the outcome of claimant's late request for hearing on the December 6, 2021 PUA determination.

DECISION: Claimant's late applications for review are allowed. Orders No. 22-UI-210822 and 22-UI-210820 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 hearing on remand will not reinstate Orders No. 22-UI-210822 and 22-UI-210820 or return these matters to EAB. Only a timely application for review of the subsequent orders 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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