

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1119

Reversed
Late Requests for Hearing Allowed
Merits Hearings Required

PROCEDURAL HISTORY: On June 29, 2021, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was not eligible to receive PUA benefits effective December 27, 2020. On July 19, 2021, the June 29, 2021 PUA determination became final without claimant having filed a request for hearing. On October 25, 2022, the Department served notice of an administrative decision, based in part on the June 29, 2021 PUA determination, concluding that claimant received benefits to which they were not entitled, and assessing an overpayment of \$2,255 in PUA benefits and \$3,300 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay to the Department (decision # 152644). On November 14, 2022, decision # 152644 became final without claimant having filed a request for hearing. On February 7, 2023, claimant filed late requests for hearing on the June 29, 2021 PUA determination and decision # 152644.

ALJ Kangas considered claimant's requests. On June 28, 2023, ALJ Kangas issued Order No. 23-UI-228961, dismissing claimant's request for hearing on the June 29, 2021 PUA determination as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by July 12, 2023. On June 30, 2023, ALJ Kangas issued Order No. 23-UI-229224, dismissing claimant's request for hearing on decision # 152644 as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by July 14, 2023. On July 17, 2023, claimant filed late responses to the appellant questionnaires and timely applications for review of Orders No. 23-UI-228961 and 23-UI-229224. On October 18, 2023, ALJ Kangas mailed letters stating that the Office of Administrative Hearings (OAH) would not consider claimant's questionnaire responses or issue additional orders regarding these matters because the questionnaire responses were late. These matters come before EAB based upon claimant's July 17, 2023 applications for review of Orders No. 23-UI-228961 and 23-UI-229224.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-228961 and 23-UI-229224. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2023-EAB-1119 and 2023-EAB-1120).

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 July 17, 2023 responses to the appellant questionnaires and a written statement that was attached to both responses. This evidence 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.

FINDINGS OF FACT: (1) On June 29, 2021, the Department mailed the June 29, 2021 PUA determination to claimant’s address on file with the Department. The June 29, 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 July 19, 2021.” Order No. 23-UI-228961, Exhibit 1 at 2.

(2) On October 25, 2022, the Department mailed decision # 152644 to claimant’s address on file with the Department. Decision # 152644 stated, “If you disagree with the amount of the overpayment, you have the right to appeal this decision. Any appeal from this decision must be filed on or before November 14, 2022 to be timely.” Order No. 23-UI-229224, Exhibit 1 at 2.

CONCLUSIONS AND REASONS: Orders No. 23-UI-228961 and 23-UI-229224 are reversed and these matters remanded for hearings on the merits of the June 29, 2021 PUA determination and decision # 152644.

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 requests for hearing on the June 29, 2021 PUA determination and decision # 152644 were due by July 19, 2021 and November 14, 2022, respectively. Because claimant did not file their requests for hearing until February 7, 2023, the requests were late.

On the statement attached to their appellant questionnaire responses, claimant stated that they “received the administrative decision when [they] called in after receiving a letter in the mail on February 7, 2023... [which] started this whole process.” EAB Exhibit 1 at 5. Claimant further stated that they “really don’t know what this is about,” had “no idea what was mailed to [them],” and “[did] not ever remember receiving a letter with that information.” EAB Exhibit 1 at 5.

From these statements, it appears that claimant, more likely than not, never received decision # 152644, and did not learn of its existence until they contacted the Department on February 7, 2023. As such, claimant failed to file a timely request for hearing on that decision due to factors beyond their reasonable control. It is not clear that those factors ever ceased. However, to the extent they did cease on the day

that claimant learned about decision # 152644, claimant filed their late request for hearing on that decision within a reasonable time, as they filed it the same day.

Claimant's written statement does not explicitly mention the June 29, 2021 PUA determination. However, claimant did state, "During the pandemic I accepted some employee benefits from the state and am now being asked to repay it." EAB Exhibit 1 at 5. When read in tandem with claimant's other described circumstances, it is reasonable to conclude that claimant never received the June 29, 2021 PUA determination either, which is why they were unaware of the issues arising from the denial of PUA benefits. As such, claimant also failed to file a timely request for hearing on the June 29, 2021 PUA determination due to factors beyond their control and, for the same reason explained above, filed their late request for hearing within a reasonable time.

For the above reasons, claimant had good cause for failing to file timely requests for hearing, and filed their late requests for hearing within a reasonable time. Claimant's late requests for hearing on the June 29, 2021 PUA determination and decision # 152644 are therefore allowed, and claimant is entitled to hearings on the merits of those decisions.

DECISION: Orders No. 23-UI-228961 and 23-UI-229224 are set aside, and these matters remanded for further proceedings consistent with this order.

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

DATE of Service: October 19, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 23-UI-228961 or 23-UI-229224 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
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