

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1314

Reversed
Late Requests for Hearing Allowed
Hearings on the Merits Required

PROCEDURAL HISTORY: On August 16, 2021, 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 starting December 27, 2020. On September 7, 2021, the August 16, 2021 notice of PUA determination became final without claimant having filed a request for hearing. On July 18, 2023, the Department served notice of an administrative decision assessing an overpayment of \$6,970 in Pandemic Unemployment Assistance (PUA) benefits and \$10,200 in Federal Pandemic Unemployment Compensation (FPUC) benefits for which claimant was liable (decision # 170528). On August 7, 2023, decision # 170528 became final without claimant having filed a request for hearing. On September 8, 2023, claimant filed late requests for hearing on the August 16, 2021 PUA determination and decision # 170528.

ALJ Kangas considered claimant's requests, and on September 29, 2023, issued Orders No. 23-UI-237223 and 23-UI-237225, respectively dismissing claimant's requests for hearing on the August 16, 2021 PUA determination and decision # 170528 as late, subject to claimant's right to renew the requests by responding to the appellant questionnaire by October 13, 2023. On October 16, 2023, claimant filed late responses to the appellant questionnaire and timely applications for review of Orders No. 23-UI-237223 and 23-UI-237225 with the Employment Appeals Board (EAB). On December 7, 2023, ALJ Kangas mailed a letter stating that the Office of Administrative Hearings (OAH) would not consider claimant's questionnaire response or issue another order regarding Order No. 23-UI-237223 because the questionnaire response was late. These matters come before EAB based upon claimant's timely applications for review of Orders No. 23-UI-237223 and 23-UI-237225.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-237223 and 23-UI-237225. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2023-EAB-1314 and 2023-EAB-1315).

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 appellant

questionnaire response, 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.

FINDINGS OF FACT: (1) On August 16, 2021, the Department mailed the August 16, 2021 PUA determination to claimant's address on file with the Department. The August 16, 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 September 7, 2021." Order No. 23-UI-237223 Exhibit 1 at 2.

(2) In 2020 and 2021, following the start of the COVID-19 pandemic, mail delivery to claimant's apartment complex was unreliable. EAB Exhibit 1 at 2. The permanent mail carrier who delivered mail to claimant relocated and the route was serviced by substitute carriers. EAB Exhibit 1 at 3. Also, during the 2020 and 2021 timeframe, the mailboxes at claimant's apartment complex were vandalized and had to be replaced. EAB Exhibit 1 at 3. The mailbox replacement took several months to complete, and during that time all delivery to claimant's apartment was stopped, and claimant was required to collect mail at the post office. EAB Exhibit 1 at 3. Because of these difficulties, claimant did not receive the August 16, 2021 PUA determination in the mail. EAB Exhibit 1 at 2.

(3) On July 18, 2023, the Department mailed decision # 170528 to claimant's address on file with the Department. Decision # 170528 stated, "You have the right to appeal this decision if you do not believe it is correct. Your request for appeal must be received not later than August 7, 2023." Order No. 23-UI-237225 Exhibit 1 at 2.

(4) Claimant was disabled and had several chronic physical and emotional health conditions. EAB Exhibit 1 at 5. In 2022, claimant's kitchen caught fire, claimant sustained injuries from the fire, and over the course of the following year, underwent three surgeries for those injuries. EAB Exhibit 1 at 6. In late 2022 and early 2023, claimant was required to vacate their apartment so their landlord could repair the damage from the kitchen fire. EAB Exhibit 1 at 6. In early 2023, claimant was permitted to return, but when they did so, the repairs were incomplete and claimant was unable to move some of their property back into the apartment. EAB Exhibit 1 at 6. The foregoing circumstances placed claimant under great stress. EAB Exhibit 1 at 6. Claimant's chronic health conditions were physically limiting and made worse by stress. EAB Exhibit 1 at 7.

(5) Claimant received decision # 170528 shortly after it was mailed. Because of claimant's health conditions exacerbated by the stress caused by the apartment difficulties, claimant was unable to request a hearing on decision # 170528 by August 7, 2023. EAB Exhibit 1 at 5. On September 8, 2023, "the moment [claimant] was able to file," they called the Department for assistance. EAB Exhibit 1 at 5. The Department representative informed claimant that they could file a late request for hearing and a request for a waiver of the overpayment. EAB Exhibit 1 at 5. In response to claimant's inquiry about their options regarding decision # 170528, claimant learned of the existence of the August 16, 2021 PUA determination. EAB Exhibit 1 at 1.

(6) On the same day claimant called the Department, claimant requested hearings on the August 16, 2021 PUA determination and decision # 170528.

CONCLUSIONS AND REASONS: Orders No. 23-UI-237223 and 23-UI-237225 are reversed, claimant’s late requests for hearing are allowed, and hearings on the merits of the August 16, 2021 PUA determination and decision # 170528 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 request for hearing on the August 16, 2021 PUA determination was September 7, 2021. The deadline to file a request for hearing on decision # 170528 was August 7, 2023. Claimant’s requests for hearing on the August 16, 2021 PUA determination and decision # 170528 were filed on September 8, 2023. Accordingly, claimant’s requests for hearing were late.

The orders under review dismissed claimant’s appeals because they concluded that claimant failed to show good cause to extend the respective deadlines to file requests for hearing to September 8, 2023. Order No. 23-UI-237223 at 2; Order No. 23-UI-237225 at 2. The record does not support these conclusions.

As to the August 16, 2021 PUA determination, claimant did not receive that decision in the mail because, during the time period in question, mail delivery was unreliable and their mailbox was vandalized and needed to be replaced. On September 8, 2023, when claimant contacted the Department for assistance regarding decision # 170528, claimant learned of the existence of the August 16, 2021 PUA determination, and requested a hearing on the administrative decision on the same day. Thus, a factor beyond claimant’s reasonable control, their failure to receive the PUA determination due to mail delivery problems, prevented claimant from timely filing a request for hearing. That factor ceased on September 8, 2023 when claimant contacted the Department. Claimant filed a request for hearing on the August 16, 2021 PUA determination on the same day the factor ceased. Accordingly, claimant established good cause to extend the deadline to file a request for hearing on the August 16, 2021 PUA determination to September 8, 2023, and filed their request within a reasonable time.

As to decision # 170528, claimant received the administrative decision shortly after its July 18, 2023 mailing date. However, at the time, claimant was disabled and had several chronic physical and emotional health conditions. Claimant experienced difficulties with their apartment relating to a kitchen fire, sustaining injuries from the fire, and having to move in and out of the apartment to accommodate repairs (which were not completed). Claimant’s chronic health conditions were physically limiting and made worse by stress. Because of claimant’s health conditions exacerbated by the stress caused by the apartment difficulties, claimant was unable to request a hearing on decision # 170528 by August 7, 2023. However, On September 8, 2023, “the moment [claimant] was able to file,” they called the Department for assistance, and filed a request for hearing on decision # 170528 the same day. Accordingly, claimant established good cause to extend the deadline to file a request for hearing on decision # 170528 to September 8, 2023, and filed their request within a reasonable time.

Claimant's late requests for hearing therefore are allowed, and claimant is entitled to hearings on the merits of the August 16, 2021 PUA determination and decision # 170528.

DECISION: Orders No. 23-UI-237223 and 23-UI-237225 are set aside, and these matters remanded for further proceedings consistent with this order.

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

DATE of Service: December 12, 2023

NOTE: The failure of any party to appear at the hearings on remand will not reinstate Order No. 23-UI-237223 or Order No. 23-UI-237225 or return either of these matters to EAB. Only a timely application for review of the applicable subsequent order will cause either of 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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