

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1339

Reversed & Remanded

PROCEDURAL HISTORY: On September 23, 2022, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was ineligible for PUA benefits effective March 15, 2020. On September 29, 2022, the Department served notice of an administrative decision based in part on the September 23, 2022, PUA determination, concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing a \$34,860 overpayment of combined PUA and Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay, and a \$5,229 monetary penalty. On October 13, 2022, the September 23, 2022, PUA determination became final without claimant having filed a request for hearing. On October 19, 2022, the September 29, 2022, administrative decision became final without claimant having filed a request for hearing.

On October 27, 2023, claimant filed late requests for hearings on the September 23, 2022, PUA determination and September 29, 2022, administrative decision. ALJ Kangas considered claimant's requests, and on November 7, 2023, issued Orders No. 23-UI-240569 and 23-UI-240571, dismissing the requests as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by November 21, 2023. On November 22, 2023, claimant filed a late response to the appellant questionnaire and timely applications for review of Orders No. 23-UI-240569 and 23-UI-240571 with the Employment Appeals Board (EAB). On December 19, 2023, ALJ Kangas mailed letters to claimant stating that because the appellant questionnaire response was late, it would not be considered and another order would not be issued.

These matters come before EAB based upon claimant's November 22, 2023, applications for review of Orders No. 23-UI-240569 and 23-UI-240571. Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-240569 and 23-UI-240571. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2023-EAB-1339 and 2023-EAB-1340, respectively).

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, 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 September 23, 2022, the September 23, 2022, PUA determination was mailed to claimant at claimant's mailing address of record. 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 October 13, 2022." Order No. 23-UI-240569 Exhibit 1 at 2.

(2) On September 29, 2022, the September 29, 2022, administrative decision was mailed to claimant at claimant's mailing address of record. It stated, "If you do not agree with this decision, you may file an appeal. You must file your appeal from this decision on or before October 19, 2022, to be timely." Order No. 23-UI-240571 Exhibit 1 at 1.

(3) In claimant's response to the appellant questionnaire, claimant stated that they did not receive the administrative decisions until "June 15 or 16, 2023." EAB Exhibit 1 at 7.

(4) On October 27, 2023, claimant filed late requests for hearings on the September 23, 2022, PUA determination and September 29, 2022, administrative decision.

CONCLUSIONS AND REASONS: Orders No. 23-UI-240569 and 23-UI-240571 are set aside, and the matters remanded for hearings to determine whether to allow claimant's late requests for hearings and, if so, the merits of the September 23, 2022, PUA determination and September 29, 2022, administrative decision.

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 deadlines to file a request for hearing on the September 23, 2022, PUA determination and September 29, 2022, overpayment decision were October 13, 2022, and October 19, 2022, respectively. Claimant's requests for hearing were filed October 27, 2023, and were therefore late.

Claimant's appellant questionnaire response stated that claimant moved from their address of record sometime prior to the issuance of the September 23, 2022, PUA determination. EAB Exhibit 1 at 3. This suggests that claimant therefore did not immediately receive the September 23, 2022, PUA determination or September 29, 2022, overpayment decision, and did not know that they had been issued. Claimant further wrote that they eventually "received, for the 1st time, all mail from OED" in June 2023. EAB Exhibit 1 at 5. If claimant moved from their address of record without updating it with the Department, other than at a time they were claiming benefits or knew or should have known of a pending appeal, their failure to promptly receive the September 23, 2022, PUA determination and September 29, 2022, overpayment decision may have been a factor beyond claimant's reasonable

control that delayed timely filing. *See* OAR 471-040-0010(1)(b)(A). On remand, inquiry should be made into whether claimant’s failure to receive the administrative decisions when they were mailed, or any other factors, constituted good cause to extend the deadline for timely filing.

Further, if good cause is found to extend the deadline for timely filing, inquiry should be made into whether the requests for hearing were filed within a “reasonable time” after the factors that prevented timely filing ceased. Claimant’s appellant questionnaire response indicated that they may have received the administrative decisions on “June 15 or 16, 2023,” however the response also stated that claimant was prompted to file their requests for hearing on October 27, 2023, because “[a] few days prior is when I was handed a large box of mail with probably 200+ pieces of mail.” EAB Exhibit 1 at 7-8. It is therefore unclear whether claimant received the administrative decisions in June 2023 or late October 2023. Accordingly, inquiry should be made into precisely when claimant received or otherwise became aware of the administrative decisions and, if the factors that prevented timely filing ceased at that time, whether claimant’s requests for hearing were filed within a reasonable time thereafter.

For these reasons, Orders No. 23-UI-240569 and 23-UI-240571 are set aside, and the matters remanded for hearings to determine whether to allow claimant’s late requests for hearing and, if so, the merits of the September 23, 2022, PUA determination and September 29, 2022, administrative decision.

DECISION: Orders No. 23-UI-240569 and 23-UI-240571 are set aside, and the matters remanded for further proceedings consistent with this order.

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

DATE of Service: January 5, 2024

NOTE: The failure of any party to appear at the hearings on remand will not reinstate Orders No. 23-UI-240569 and 23-UI-240571 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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