

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0060

*Order No. 23-UI-244202 Reversed ~
Late Request for Hearing Allowed, Merits Hearing Required
Order No. 23-UI-244199 Affirmed ~ Late Request for Hearing Dismissed*

PROCEDURAL HISTORY: On November 10, 2020, 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 February 3, 2020. On November 30, 2020, the November 10, 2020 PUA determination became final without claimant having filed a request for hearing. On December 17, 2021, the Department served notice of an administrative decision concluding that claimant had received benefits to which he was not entitled, and assessing an overpayment of \$1,800 in Lost Wages Assistance (LWA) benefits that claimant was required to repay to the Department (decision # 0564772). On January 6, 2022, decision # 0564772 became final without claimant having filed a request for hearing. On April 11, 2022, claimant filed late requests for hearing on the November 10, 2020 PUA determination and decision # 0564772.

ALJ Kangas considered claimant's request in regard to the November 10, 2020 PUA determination, and on April 26, 2022 issued Order No. 22-UI-192172, dismissing claimant's request for hearing on the November 10, 2020 PUA determination as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by May 10, 2022. On or around May 5, 2022, claimant filed a timely response to the appellant questionnaire. On July 11, 2022, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 22-UI-192172 was vacated and that a hearing would be scheduled to determine whether claimant had good cause to file the late request for hearing and, if so, the merits of the November 10, 2020 PUA determination.

On December 20, 2023, ALJ Lucas conducted separate hearings on the November 10, 2020 PUA determination and decision # 0564772,¹ and on December 27, 2023 issued Orders No. 23-UI-244202 and 23-UI-244199, dismissing claimant's late requests for hearing on the November 10, 2020 PUA determination and decision # 0564772, respectively, and leaving those decisions undisturbed. On

¹ The Employment Department submitted an Attestation in lieu of attending the hearing on the November 10, 2020 PUA determination.

January 8, 2024, claimant filed applications for review of Orders No. 23-UI-244202 and 23-UI-244199 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-244202 and 23-UI-244199. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2024-EAB-0060 and 2024-EAB-0061).

WRITTEN ARGUMENT: Claimant’s argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant’s reasonable control prevented him from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant’s argument to the extent it was based on the record.

EAB reviewed the entire consolidated hearing record. On *de novo* review and pursuant to ORS 657.275(2), Order No. 23-UI-244199, which dismissed claimant’s late request for hearing on decision # 0564772, is **adopted**. The remainder of this decision addresses whether claimant’s late request for hearing on the November 10, 2020 PUA determination should be allowed.

FINDINGS OF FACT: (1) Claimant has a learning disability “which influenced [his] understanding” of the unemployment insurance appeals processes. As a result, his wife managed at least some of his affairs pertaining to these processes.

(2) On May 4, 2020, an initial claim for PUA benefits was filed for claimant.²

(3) On November 10, 2020, the Department mailed the November 10, 2020 PUA determination to claimant’s address on file with the Department. The November 10, 2020 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 November 30, 2020.” Order No. 23-UI-244202, Exhibit 1 at 2.

(4) Claimant received the November 10, 2020 administrative decision on or around November 23, 2020. However, claimant was receiving regular UI benefits at the time, and claimant’s wife did not understand the relevance of the November 10, 2020 PUA determination.

(5) On December 9, 2020, the Department issued two administrative decisions which each disqualified claimant from receiving benefits due to having refused offered work (decisions # 75500 and 82657).³ Claimant’s wife attempted to contact the Department regarding these decisions, but had a difficult time reaching a representative. When she finally was able to reach a Department representative, they suggested to her that because “appeals [were] backed up at least 9 months,” she would be better served

² EAB has taken notice of this fact, which is contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). Any party that objects to our taking notice of this information 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 noticed fact will remain in the record.

³ EAB has taken notice of these facts, which are contained in Employment Department records. OAR 471-041-0090(1). Any party that objects to our taking notice of this information 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 noticed fact will remain in the record.

by just filing a claim on claimant's behalf for PUA benefits. Exhibit 3 at 3. She did so on January 18, 2021, unaware that claimant had already been denied PUA benefits in November 2020.

(6) On December 17, 2021, the Department issued decision # 0564772, which concluded that claimant had been overpaid LWA benefits due to one or both of the disqualifications under decisions # 75500 and 82657. The Department subsequently garnished claimant's wages to recover the overpaid benefits, which prompted his wife to file the requests for hearing on the November 10, 2020 PUA determination, decision # 0564772, and the two disqualifications under decisions # 75500 and 82657.

CONCLUSIONS AND REASONS: Order No. 23-UI-244202 is reversed and this matter remanded for a hearing on the merits of the November 10, 2020 PUA determination.

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. Under OAR 471-040-0010(1)(b)(B), "good cause" does not include "[n]ot understanding the implications of a decision or notice when it is received."

The request for hearing on the November 10, 2020 PUA determination was due by November 30, 2020. Because claimant did not file the request for hearing until April 11, 2022, the request was late.

The record shows that claimant received the November 10, 2020 PUA determination prior to the timely filing deadline. The significant delay in filing the request for hearing appeared to stem from a series of misunderstandings regarding the reason for the issuance of the November 10, 2020 PUA determination, its relevance, and claimant's right to appeal the decision. Typically, this would not be considered good cause for filing the late request for hearing, as OAR 471-040-0010(1)(b)(B) specifically excepts such circumstances.

However, claimant has a learning disability which impacted his "understanding of the situation." Exhibit 3 at 3. The nature or extent of claimant's learning disability is not evident in the record. However, at hearing, claimant offered little testimony on the substance of the late request for hearing, while his wife provided most of the testimony. Furthermore, when testifying about the reason for the late request for hearing and the circumstances which led to it, claimant's wife generally spoke in the first person, suggesting that she personally managed the matter on claimant's behalf by acting informally as his agent.⁴ It is therefore reasonable to infer that it was actually claimant's wife, acting as claimant's representative on his behalf, rather than claimant himself, who failed to file a timely request for hearing on the November 10, 2020 PUA determination. Claimant's wife may not have understood due to her not understanding the implications of the decision or notice when they received it, and the facts have been found accordingly. Claimant's wife further relied on the advice she was provided by a Department representative to file a PUA claim again on claimant's behalf rather than an appeal. Because claimant has a disability and reasonably relied on his wife to manage his affairs, her failure to timely file a request

⁴ E.g., claimant's wife testified, "I filed for the PUA [*sic*] on the recommendation of the... person we had spoken to regarding the denial of the regular UI at the beginning of January [2021.]" Audio Record at 18:01.

for hearing was a factor outside his reasonable control and is an excusable mistake, which constitutes good cause.

Further, given that claimant's wife provided most of the testimony at hearing, it is reasonable to infer that claimant continued to rely on her to manage the matter for him until, and after, she filed the late request for hearing on his behalf. The excusable mistake which caused the late filing therefore persisted until at least the date on which the request for hearing was actually filed. Thus, claimant, by way of his wife, filed the request for hearing within a "reasonable time," and the late request for hearing is therefore allowed.

For the above reasons, claimant had good cause for failing to file a timely request for hearing, and filed his late request for hearing within a reasonable time. Claimant's late request for hearing on the November 10, 2020 PUA determination therefore is allowed, and claimant is entitled to a hearing on the merits of that decision.

DECISION: Order No. 23-UI-244202 is set aside, as outlined above. Order No. 23-UI-244199 is affirmed.

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

DATE of Service: February 9, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-244202 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

NOTE: You may appeal this decision as to Order No. 23-UI-244199 by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at courts.oregon.gov. Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

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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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