

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0175

Application for Review Dismissed
No Justiciable Controversy

PROCEDURAL HISTORY AND FINDINGS OF FACT: On December 3, 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 effective December 8, 2020, because he had not filed his initial application for PUA benefits before the October 6, 2021, deadline. On December 23, 2021, the December 3, 2021, PUA determination became final without claimant having filed a request for hearing. On June 13, 2022, claimant filed a late request for hearing. ALJ Kangas considered the request, and on September 22, 2022, issued Order No. 22-UI-203318, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by October 6, 2022. On September 30, 2022, claimant filed a timely response to the appellant questionnaire.

On January 30, 2023, the Office of Administrative Hearings (OAH) mailed a letter cancelling and vacating Order No. 22-UI-203318, and stating that a hearing would be held on whether claimant's late request for hearing should be allowed and, if so, the merits of the December 3, 2021, PUA determination. On January 31, 2023, OAH served a notice of hearing scheduled for February 13, 2023. On February 13, 2023, OAH served a change to the notice of hearing, re-scheduling the hearing for March 6, 2023. On March 6, 2023, claimant failed to appear for the hearing, and on March 7, 2023, ALJ Frank issued Order No. 23-UI-218068, dismissing the hearing request due to claimant's failure to appear, leaving the December 3, 2021, PUA determination undisturbed. On March 27, 2023, Order No. 23-UI-218068 became final without claimant filing a request to reopen. On June 23, 2023, claimant filed a late request to reopen the March 6, 2023, hearing.

On January 29, 2024, ALJ Adamson conducted a hearing at which the Department submitted an Attestation in lieu of attending. During the hearing, ALJ Adamson stated that he would allow claimant's request to reopen the March 6, 2023, hearing and allow claimant's late request for hearing on the December 3, 2021, PUA determination, but that the case would need to be continued to permit a Department representative to participate in order to decide the merits of the December 3, 2021, PUA determination. January 29, 2024, Audio Record at 22:00; 30:05; 41:40 to 45:55. On January 30, 2024,

OAH served a notice of hearing scheduling a hearing on the merits of the December 3, 2021, PUA determination for February 15, 2024.

However, on February 7, 2024, ALJ Adamson issued Order No. 24-UI-247585, which stated that on February 6, 2024, the Department issued a notice advising that the December 3, 2021, PUA determination was issued in error and without jurisdiction. As a result of the Department's February 6, 2024, notice, Order No. 24-UI-247585 dismissed claimant's request for hearing on the December 3, 2021, PUA determination due to the Department's cancellation or amendment of the December 3, 2021, PUA determination.

On February 8, 2024, ALJ Adamson mailed a letter to the parties. The letter explained that on February 17, 2023, the Department issued a subsequent PUA determination—note the original PUA determination was issued on December 3, 2021—which concluded that claimant was not eligible for PUA benefits. The letter stated that on February 7, 2024, the Department vacated the February 17, 2023, PUA determination. The letter stated that, because of the foregoing, Order No. 24-UI-247585 was issued in error. The letter stated that Order No. 24-UI-247585 was vacated and a new order on the merits of the December 3, 2021, PUA determination would be issued shortly.

On February 9, 2024, ALJ Adamson issued Amended Order No. 24-UI-247769, allowing claimant's request to reopen the March 6, 2023 hearing and late request for hearing on the December 3, 2021 PUA determination, and reversing the December 3, 2021 PUA determination by concluding that claimant was eligible for PUA benefits for the weeks of August 23 through October 17, 2020 (weeks 35-20 through 42-20) because he had filed his initial application for PUA benefits before the October 6, 2021 deadline.

On February 12, 2024, claimant filed a timely application for review of Amended Order No. 24-UI-247769 with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant's written argument in reaching this decision. In his argument, claimant suggests that although the order under review determined he was entitled to receive PUA benefits for weeks 35-20 through 42-20, the Department may not have paid claimant benefits for some of those weeks. *See* Written Argument at 2 ("PUA Claim forms Told Were Never Received 2-wk of 10 wks Reported several calls to PUA asking why No Benefits Paid – Called several Times All Recorded!"). Claimant also attached a letter from OAH relating to a 2014 matter in which claimant was determined to be liable for an overpayment of benefits. Written Argument at 4. Claimant additionally wrote "I Missed a Hearing I Had No Knowledge of found Guilty Asked to Repay 14 Thousand Dollars. . . . Garnished my Pay Why!! 14,0000 – for Why? No Notice, 8 years 10 week Covid filing." Written Argument at 5.

The scope of EAB's review extends only to claimant's eligibility for PUA benefits for the weeks at issue in this case. Amended Order No. 24-UI-247769 concluded that claimant was entitled to receive PUA benefits for eight weeks, August 23, 2020, through October 17, 2020 (weeks 35-20 through 42-20). Amended Order No. 24-UI-247769 at 6. To the extent claimant is asserting in his argument that the Department did not pay him for all the weeks to which Amended Order No. 24-UI-247769 determined him to be entitled to PUA benefits, claimant should contact the Department for clarification. Claimant also should contact the Department for more information to the extent claimant has an outstanding overpayment liability from 2014 and is concerned that a portion of the PUA benefits that Amended

Order No. 24-UI-247769 determined he was entitled to may have been garnished or intercepted to satisfy that overpayment.

CONCLUSIONS AND REASONS: Claimant’s application for review of Amended Order No. 24-UI-247769 presents no justiciable controversy and is dismissed.

On February 12, 2024, claimant filed with the Employment Appeals Board (EAB) an application for review of an order that allowed the appellant benefits. Claimant did not assign error to any portion of that order, did not request reversal of any portion of the order, and alleged no facts entitling claimant to further relief in this matter. Accordingly, there is no justiciable controversy before EAB based upon claimant’s application for review. *See accord Barcik v. Kubiacyk*, 321 Or 174, 895 P2d 765 (1995). Because the case before EAB presents no justiciable controversy, the application for review of Amended Order No. 24-UI-247769 is dismissed and Amended Order No. 24-UI-247769 remains undisturbed.

DECISION: The application for review filed February 12, 2024, is dismissed. Amended Order No. 24-UI-247769 remains undisturbed.

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

DATE of Service: March 14, 2024

NOTE: You may appeal this decision 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



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
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.