

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0195

Reversed & Remanded

PROCEDURAL HISTORY: On November 29, 2021, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA), concluding that claimant was ineligible to receive PUA benefits effective December 27, 2020. On December 20, 2021, the November 29, 2021, PUA determination became final without claimant having filed a request for hearing. On October 19, 2023, the Department served notice of an administrative decision concluding that claimant received benefits to which they were not entitled, and assessing an overpayment of \$4,264 in regular unemployment insurance (regular UI) benefits and \$10,200 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was liable to repay to the Department (decision # 122310). On November 8, 2023, decision # 122310 became final without claimant having filed a request for hearing.

On January 17, 2024, claimant filed late requests for hearing on the November 29, 2021, PUA determination and decision # 122310. ALJ Kangas considered claimant's requests, and on January 30, 2024, and January 31, 2024, issued Orders No. 24-UI-246861 and 24-UI-246950, respectively dismissing the requests for hearing on decision # 122310 and the November 29, 2021, PUA determination as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by February 13, 2024, and February 14, 2024. On February 19, 2024, claimant filed a late response to the appellant questionnaire and timely applications for review with the Employment Appeals Board (EAB). On February 21, 2024, ALJ Kangas mailed letters to claimant stating that because the appellant questionnaire response was late, it would not be considered and further orders would not be issued in the matters.¹ These matters come before EAB based upon claimant's February 19, 2024, applications for review of Orders No. 24-UI-246861 and 24-UI-246950.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 24-UI-246861 and 24-UI-246950. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2024-EAB-0196 and 2024-EAB-0195).

¹ The same appellant questionnaire response was timely filed as to Order No. 24-UI-247851, which is not currently before EAB. That matter is currently pending before the Office of Administrative Hearings (OAH).

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.

WRITTEN ARGUMENT: Claimant submitted an argument and several documents relating to the merits of the November 29, 2021, PUA determination on February 27, 2024, and March 2, 2024. EAB considered the argument to the extent it was relevant to the issue currently before EAB, which is the timeliness of claimant’s requests for hearing. The parties may offer these documents and other new information, relevant to whether the late requests for hearing should be allowed and the merits of the administrative decisions, into evidence at the remand hearing. At that time, it will be determined if this information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing regarding documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties in advance of the hearing at their addresses as shown on the certificate of mailing for the notice of hearing.

FINDINGS OF FACT: (1) The November 29, 2021, PUA determination, mailed to claimant’s address of record on file with the Department on November 29, 2021, 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 December 20, 2021.” Order No. 24-UI-246950, Exhibit 1 at 2. The determination also stated, “If you previously received benefits you are not entitled to. . . you may have an overpayment, which you must pay back.” Order No. 24-UI-246950, Exhibit 1 at 2.

(2) Claimant was working out of the country from September 2021 through January 2022.

(3) On January 10, 2022, claimant filed an online request for hearing. The request did not identify a decision number and listed the decision date as “December 20, 2021.” The request stated only, “I’ve been sent a letter letting me know I was overpaid and I want to appeal it.” This filing was treated as a request for hearing on an administrative decision issued December 2, 2020, regarding a work separation not directly related to claimant’s PUA claim. No administrative decision was issued regarding any of claimant’s claims for benefits on December 20, 2021. No administrative decision had been issued to claimant as of January 10, 2022, that assessed any overpayment.²

(4) Decision # 122310, mailed to claimant’s address of record on file with the Department on October 19, 2023, stated, “[Y]ou have the right to appeal this decision. Any appeal from this decision must be received by November 8, 2023, to be timely.” Order No. 24-UI-246861, Exhibit 1 at 2.

² EAB has taken notice of these facts which are 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 facts will remain in the record.

CONCLUSIONS AND REASONS: Orders No. 24-UI-246861 and 24-UI-246950 are set aside, and these matters remanded for hearings to determine whether claimant’s late requests for hearing should be allowed and, if so, the merits of the November 29, 2021, PUA determination and decision # 122310.

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 November 29, 2021, PUA determination and decision # 122310 were due December 20, 2021, and November 8, 2023, respectively. Claimant’s requests for hearing on both decisions were filed January 17, 2024. Therefore, the requests were late. Further development of the record is needed to determine whether claimant’s late requests for hearing should be allowed.

Claimant wrote in their response to the appellant questionnaire that they were working out of the country from “September 2021 thru January 2022” and therefore “[did] not know the exact date” they received the November 29, 2021, PUA determination. EAB Exhibit 1 at 1. Claimant may have intended their January 10, 2022, request for hearing to apply to the November 29, 2021, PUA determination, as that request mentioned the date “December 20, 2021” which was the deadline to appeal the PUA determination, and the determination made reference to a possible overpayment, which the request for hearing also mentioned. If so, this suggests the possibility that claimant’s receipt of the November 29, 2021, PUA determination was delayed due to their trip abroad; that the decision was discovered by claimant upon their return home sometime between January 1, 2022, and January 10, 2022; and that claimant filed the January 10, 2022, request for hearing to appeal the November 29, 2021, PUA determination, but the request was inadvertently applied to a different administrative decision. Further development of the record is warranted regarding these events and whether they demonstrate good cause to extend the deadline for timely filing.

Additionally, claimant wrote in their appellant questionnaire response that they filed the January 17, 2024, request for hearing “after many attempts to reach the OR Employment Office by phone and email, most recently October 17 and 19, 2023. I received no response until I filed a request for hearing.” EAB Exhibit 1 at 1. As decision # 122310 was mailed to claimant October 19, 2023, and would likely have been delivered *after* that date, claimant may be asserting that they did not receive decision # 122310 by saying that they received “no response” from the Department after October 19, 2023. If so, this may have constituted a factor beyond claimant’s reasonable control that delayed timely filing, and further development of the record in this regard is warranted.

On remand, inquiry should focus on whether and when claimant received each administrative decision and, if not received in the ordinary course of the mail, the possible cause. This inquiry should include the exact dates of claimant’s travel abroad, and whether claimant had reason to expect that time-sensitive mail from the Department would arrive in claimant’s absence. The inquiry should also include whether other factors beyond claimant’s reasonable control or an excusable mistake prevented timely filing.

Furthermore, if good cause is found to extend the deadline for timely filing, inquiry should be made to determine whether claimant's requests for hearing were filed within a reasonable time after the factors that prevented timely filing ceased. This should include when claimant learned of each decision and the appeal rights therefrom, including the right to file a late request for hearing if the appeal deadline had already passed. It is also necessary for the inquiry to include whether claimant filed or attempted to file a request for hearing on the November 29, 2021, PUA determination earlier than January 17, 2024, such as via the January 10, 2022, request for hearing.

For these reasons, Orders No. 24-UI-246861 and 24-UI-246950 are set aside, and these matters remanded for hearings to determine whether claimant's late requests for hearing should be allowed and, if so, the merits of the November 29, 2021, PUA determination and decision # 122310.

DECISION: Orders No. 24-UI-246861 and 24-UI-246950 are set aside, and these matters remanded for further proceedings consistent with this order.

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

DATE of Service: March 25, 2024

NOTE: The failure of any party to appear at the hearings on remand will not reinstate Orders No. 24-UI-246861 and 24-UI-246950 or return these matters to EAB. Only a timely application 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.

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