

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0284

Affirmed
Requests to Reopen Denied

PROCEDURAL HISTORY: On June 29, 2021, 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 December 27, 2020. On July 19, 2021, the June 29, 2021 PUA determination became final without claimant having filed a request for hearing. On October 25, 2022, the Department served notice of an administrative decision, based in part on the June 29, 2021 PUA determination, concluding that claimant received benefits to which they were not entitled, and assessing an overpayment of \$2,255 in PUA benefits and \$3,300 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay to the Department (decision # 152644). On November 14, 2022, decision # 152644 became final without claimant having filed a request for hearing. On February 7, 2023, claimant filed late requests for hearing on the June 29, 2021 PUA determination and decision # 152644.

ALJ Kangas considered claimant's requests. On June 28, 2023, ALJ Kangas issued Order No. 23-UI-228961, dismissing claimant's request for hearing on the June 29, 2021 PUA determination as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by July 12, 2023. On June 30, 2023, ALJ Kangas issued Order No. 23-UI-229224, dismissing claimant's request for hearing on decision # 152644 as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by July 14, 2023. On July 17, 2023, claimant filed late responses to the appellant questionnaires and timely applications for review of Orders No. 23-UI-228961 and 23-UI-229224 with the Employment Appeals Board (EAB). On October 18, 2023, ALJ Kangas mailed letters stating that the Office of Administrative Hearings (OAH) would not consider claimant's questionnaire responses or issue additional orders regarding these matters because the questionnaire responses were late. Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-228961 and 23-UI-229224 and, on October 19, 2023, issued EAB Decisions 2023-EAB-1119 and 2023-EAB-1120, reversing Orders No. 23-UI-228961 and 23-UI-229224, respectively, by allowing claimant's late requests for hearing on the June 29, 2021 PUA determination and decision # 152644, respectively, and remanding those matters for hearings on the merits.

On October 25, 2023, OAH mailed notices of hearings on both administrative decisions, scheduled for November 8, 2023. On November 8, 2023, claimant failed to appear at the hearings, and on November 16, 2023, ALJ Enyinnaya issued Orders No. 23-UI-241285 and 23-UI-241287, re-dismissing claimant's requests for hearing on the June 29, 2021 PUA determination and decision # 152644, respectively, due to claimant's failure to appear at the hearings, and leaving those decisions undisturbed. On November 29, 2023, claimant filed timely requests to reopen the November 8, 2023 hearings. ALJ Scott considered claimant's requests, and on February 27, 2024 issued Orders No. 24-UI-248970 and 24-UI-248969, denying claimant's requests to reopen the hearings and leaving Orders No. 23-UI-241285 and 23-UI-241287, respectively, undisturbed. On March 18, 2024, claimant filed applications for review of Orders No. 24-UI-248970 and 24-UI-248969 with EAB.

Pursuant to OAR 471-041-0095, EAB consolidated its review of Orders No. 24-UI-248970 and 24-UI-248969. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2024-EAB-0284 and 2024-EAB-0285).

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of claimant's written statement enclosed with the March 18, 2024 applications for review. This statement contains claimant's explanation for their failures to appear at the November 8, 2023 hearings, and is necessary to complete the record under OAR 471-041-0090(1)(a). The statement has been marked as EAB Exhibit 2, and a copy provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 2 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.

FINDING OF FACT: (1) On October 25, 2023, OAH mailed notices of hearings on the June 29, 2021 PUA determination and decision # 152644, scheduled for November 8, 2023. Claimant "put the wrong day" for the hearings on their calendar. EAB Exhibit 2 at 1. On November 8, 2023, claimant failed to appear at the hearings. Claimant later "called in on the day and time [they] had written in [their] calendar" and learned that they had mis-recorded when the hearings were scheduled for. EAB Exhibit 2 at 1.

CONCLUSIONS AND REASONS: Claimant's requests to reopen the November 8, 2023 hearings are denied.

ORS 657.270(5) provides that any party who failed to appear at a hearing may request to reopen the hearing, and the request will be allowed if it was filed within 20 days of the date the hearing decision was issued and shows good cause for failing to appear. "Good cause" exists when the requesting party's failure to appear at the hearing arose from an excusable mistake or from factors beyond the party's reasonable control. OAR 471-040-0040(2) (February 10, 2012). The party requesting reopening shall set forth the reason(s) for missing the hearing in a written statement, which the Office of Administrative Hearings (OAH) shall consider in determining whether good cause exists for failing to appear at the hearing. OAR 471-040-0040(3).

Claimant filed their request to reopen the November 8, 2023 hearings within 20 days of when Orders No. 23-UI-241285 and 23-UI-241287 were issued, and claimant's reopen requests were therefore

timely. However, claimant has not shown that they had good cause to reopen the November 8, 2023 hearings.

On their written statement enclosed with the applications for review, claimant indicated that they failed to appear at the hearings on November 8, 2023 because they had incorrectly recorded the dates of the hearings on their calendar. EAB Exhibit 2 at 1. Although this was likely the result of a mistake on claimant's part, it was not an "excusable mistake" within the meaning of the administrative rules because it did not, for example, raise a due process issue, and was not the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply. Similarly, claimant has not shown that it was not within their reasonable control to correctly record the date of the hearings in their calendar. Therefore, claimant has not shown good cause to reopen the November 8, 2023 hearings, and, accordingly, claimant's reopen requests are denied.

DECISION: Orders No. 24-UI-248970 and 24-UI-248969 are affirmed.

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

DATE of Service: April 22, 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.

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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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