

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0495

Reversed
Late Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On May 3, 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 May 24, 2021, the May 3, 2021, PUA determination became final without claimant having filed a request for hearing. On February 23, 2023, claimant filed a late request for hearing on the May 3, 2021, PUA determination that the Department either did not receive or failed to process. On May 15, 2023, claimant filed a second late request for hearing on the May 3, 2021, PUA determination. ALJ Kangas considered claimant's May 15, 2023, late request for hearing, and on October 19, 2023, issued Order No. 23-UI-238978, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by November 2, 2023. On November 2, 2023, claimant filed a timely response to the appellant questionnaire. On April 10, 2024, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 23-UI-238978 was vacated and that a new 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 May 3, 2021, PUA determination.

On May 16, 2024, ALJ Frank conducted a hearing at which the Department did not appear, and on May 23, 2024, issued Order No. 24-UI-254889, dismissing claimant's request for hearing on the May 3, 2021, PUA determination as late without good cause and leaving the May 3, 2021, PUA determination undisturbed. On June 9, 2024, claimant filed an application for review of Order No. 24-UI-254889 with the Employment Appeals Board (EAB).

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.

FINDINGS OF FACT: (1) On May 3, 2021, the Department mailed the May 3, 2021, PUA determination to claimant's address on file with the Department. The May 3, 2021, PUA determination concluded that claimant was not eligible to receive PUA benefits effective December 27, 2020 because he failed to provide acceptable proof of self-employment within the required timeframe. Exhibit 1 at 1. The May 3, 2021, 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 May 24, 2021." Exhibit 1 at 2.

(2) Claimant did not receive the May 3, 2021, PUA determination because the US Postal Service did not deliver it to claimant's address.

(3) On May 24, 2021, the May 3, 2021, PUA determination became final without claimant having filed a request for hearing.

(4) On September 26, 2022, claimant received an overpayment determination, based in part on the May 3, 2021, PUA determination. The overpayment determination concluded that claimant was liable for an overpayment of the PUA benefits he had previously received.

(5) Shortly after claimant received the overpayment determination, he called the Department and spoke to a representative. The representative did not mention claimant's right to file a late request for hearing on the May 3, 2021, PUA determination. Rather, the representative urged claimant to send in tax records from his business to meet the PUA substantiation requirement.

(6) In late September 2022, shortly after claimant received the overpayment determination on September 26, 2022, claimant requested and received a copy of the May 3, 2021, PUA determination.

(7) In October 2022, claimant called the Department and spoke to a representative. The representative "instructed [claimant] to upload 3 years past tax returns as proof of self-employment." Exhibit 3 at 2. Claimant "immediately" did as the representative instructed. Exhibit 3 at 2.

(8) In November 2022, claimant called the Department requesting an update on whether the Department deemed the documents he submitted to be sufficient to substantiate self-employment. The representative instructed claimant to continue waiting. In December 2022 and January 2022, claimant again called requesting an update. On both occasions, the representatives claimant spoke to instructed him to continue waiting.

(9) On February 23, 2023, claimant called the Department again requesting an update. The representative to whom claimant spoke told him that what he had submitted "would not be reviewed without an appeal to a judge." Exhibit 3 at 2. On that date, February 23, 2023, claimant filed a late request for hearing on the May 3, 2021, PUA determination via the internet. The Department either did not receive the February 23, 2023, hearing request or received it, but failed to process it.

(10) On May 15, 2023, claimant filed a second late request for hearing on the May 3, 2021, PUA determination via the internet. The Department received and processed the May 15, 2023, hearing request.

CONCLUSIONS AND REASONS: Order No. 24-UI-254889 is reversed, claimant's late request for hearing is allowed, and a hearing on the merits of the May 3, 2021, PUA determination is required.

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 request for hearing on the May 3, 2021, PUA determination was due by May 24, 2021. Because claimant did not file their request for hearing until February 23, 2023, the request was late.

The order under review concluded that claimant established good cause to extend the filing deadline to the point in time claimant received the copy of the May 3, 2021, PUA determination in late September 2022, but that upon receipt of the May 3, 2021, PUA determination, the factor beyond claimant's reasonable control preventing a timely filing ceased to exist, and claimant failed to file his late request for hearing within a seven-day "reasonable time" of that date. Order No. 24-UI-254889 at 3. Based on the foregoing, the order under review concluded that claimant's late request for hearing should not be allowed. Order No. 24-UI-254889 at 3. The record does not support this conclusion.

Claimant established good cause to extend the filing deadline to February 23, 2023, and filed his request for hearing within a reasonable time. Claimant did not receive the May 3, 2021, PUA determination when it was issued. Claimant's non-receipt of the PUA determination was a circumstance beyond his control that prevented a timely filing. In late September 2022, shortly after claimant received the overpayment determination on September 26, 2022, claimant requested and received a copy of the May 3, 2021, PUA determination. However, for the reasons that follow, claimant's receipt of the May 3, 2021, PUA determination did not cause the factors that prevented a timely filing to cease.

The May 3, 2021, 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 May 24, 2021." Exhibit 1 at 2. This language was not sufficient to put claimant on notice of his right to file an appeal late and to have the late appeal granted if the criteria for doing so was satisfied. Claimant received the May 3, 2021, PUA determination in late September 2022, more than one year after the May 24, 2021, date the PUA determination stated the appeal "must" be received by. Exhibit 1 at 2. Under these circumstances, where the PUA determination referenced a right to appeal but stated that the deadline for filing had passed more than a year prior, claimant had no reason to believe he could file an appeal on the PUA determination as of when he received it in late September 2022. Upon receipt of the decision, claimant immediately contacted the Department to determine how to proceed and relied upon the Department's instructions on how to proceed.

Despite claimant's multiple phone conversations with Department representatives between September 2022 and January 2023, the factors beyond claimant's reasonable control that prevented a timely filing continued until claimant learned of his late appeal rights. As to claimant's September 2022 and October 2022 calls with the Department, the representatives did not mention claimant's right to file a late request for hearing on the May 3, 2021, PUA determination, instead just urging claimant to send in tax records

from his business to meet the PUA substantiation requirement. In October 2022, claimant did so. Thereafter, during his conversations with the Department in November and December 2022, and in January 2023, claimant requested an update as to whether the Department deemed the documents he had submitted to be sufficient to substantiate self-employment. During those calls, the representatives claimant spoke with did not inform claimant of his right to file a late request for hearing but simply told him to continue waiting.

The factors beyond claimant's control that prevented a timely filing did not cease to exist until February 23, 2023. On that date, claimant called the Department, again requesting an update. The representative to whom claimant spoke told him that what he had submitted "would not be reviewed without an appeal to a judge." Exhibit 3 at 2. On the same day, claimant filed a late request for hearing via the internet. Although the Department either did not receive this hearing request or received it but failed to process it, the fact that claimant filed a valid request for hearing on that date is supported by the record and was not rebutted by the Department, who failed to appear at the hearing in this matter. *See* Exhibit 3 at 2; Audio Record at 16:15 to 16:44.

Accordingly, claimant established good cause to extend the deadline to file a request for hearing on the May 3, 2021, PUA determination to February 23, 2023, the date he learned of his right to file a late appeal. Claimant filed his late request for hearing on that date, which was within a reasonable time. Claimant's late request for hearing is therefore allowed, and claimant is entitled to a hearing on the merits of the May 3, 2021, PUA determination.

DECISION: Order No. 24-UI-254889 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: July 16, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-254889 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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.