

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0101

Reversed & Remanded

PROCEDURAL HISTORY AND FINDINGS OF FACT: On November 22, 2021, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was not eligible for PUA benefits effective April 26, 2020. On December 13, 2021, the November 22, 2021, PUA determination became final without claimant having filed a request for hearing. On September 1, 2022, the Department served notice of an administrative decision, based in part on the November 22, 2021, PUA determination, concluding that claimant received benefits to which they were not entitled, and assessing an overpayment of \$9,840 in PUA benefits and \$10,200 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay to the Department (decision # 121042). On September 21, 2022, decision # 121042 became final without claimant having filed a request for hearing. On October 30, 2024, claimant filed late requests for hearing on the November 22, 2021, PUA determination and decision # 121042.

ALJ Kangas considered claimant's requests. On December 17, 2024, ALJ Kangas issued Order No. 24-UI-276972, dismissing claimant's request for hearing on decision # 121042 as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by December 31, 2024. On December 19, 2024, ALJ Kangas issued Order No. 24-UI-277468, dismissing claimant's request for hearing on the November 22, 2021, PUA determination as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by January 2, 2025. On January 8, 2025, claimant filed a late response to the appellant questionnaire.

ALJ Kangas considered claimant's response to the appellant questionnaire, and on January 28, 2025, issued Orders No. 25-UI-281311 and 25-UI-281316, cancelling Orders No. 24-UI-277468 and 24-UI-276972 and re-dismissing claimant's requests for hearing on the November 22, 2021, PUA determination and decision # 121042 as late without good cause. On February 5, 2025, claimant filed timely applications for review of Orders No. 25-UI-281311 and 25-UI-281316 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 25-UI-281311 and 25-UI-281316. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2025-EAB-0101 and 2025-EAB-0100).

EVIDENTIARY MATTER: With their applications for review, claimant enclosed a copy of their original January 8, 2025, response to the appellant questionnaire, already admitted to the record as Exhibit 3, and an updated version of the questionnaire response with a written narrative similar to that included with the January 8, 2025, response. Claimant's updated version of the questionnaire response contained information that was not part of the record admitted by the orders under review, and did not show that factors or circumstances beyond claimant's reasonable control prevented them from offering the information with their original response. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence by the orders under review. EAB considered any parts of claimant's updated response that were based on the record.

The parties may offer new information, such as the new information contained in the updated questionnaire response, into evidence at the remand hearing. At that time, it will be determined if the new 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.

CONCLUSIONS AND REASONS: Orders No. 25-UI-281311 and 25-UI-281316 are set aside and these matters remanded for a hearing on whether claimant's late requests for hearing on the November 22, 2021, PUA determination and decision # 121042 should be allowed and, if so, the merits of those decisions.

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 22, 2021, PUA determination and decision # 121042 were due by December 13, 2021, and September 21, 2022, respectively. Because claimant did not file their requests for hearing on either decision until October 30, 2024, the requests were late.

On their requests for hearing, a Department representative stated, "Claimant states never received any documents regarding an overpayment. Claimant found out about overpayment when filed for UI benefits in July 2024." *See* Order No. 25-UI-281311, Exhibit 2 at 4. Additionally, claimant stated on their January 8, 2025, response to the appellant questionnaire, "I did not ever get a copy of any decision... I found out July 2024 when I filed for U.E." *See* Order No. 25-UI-281311, Exhibit 3 at 1. Claimant also explained, in response to the question asking if there was anything they could have done to meet the deadline, "If I had known in 2021 [illegible] was needed I would have submitted then. I did not know about hearing decision." *See* Order No. 25-UI-281311, Exhibit 3 at 2. Further, the Department's records

indicate that claimant applied for a waiver of the overpayment assessed by decision # 121042 in late July 2024; that the Department denied the waiver request on July 30, 2024; and that, after a hearing on the matter, the waiver denial was affirmed by an ALJ on September 5, 2024.¹

Considering all the above, it is clear that claimant became aware of the overpayment assessed by decision # 121042 in July 2024. Claimant's above responses also suggest that they may have never received copies of either of the administrative decisions at issue here, which could constitute good cause for extending the filing period for the requests for hearing. However, further information is necessary to determine whether claimant had good cause for filing the late requests for hearing and, if so, whether they filed the requests within a reasonable time.

On remand, the ALJ should inquire as to when, if ever, claimant received either of the administrative decisions. If the record on remand shows that claimant did not receive the administrative decisions, the ALJ should inquire as to what circumstances (such as an incorrect address or trouble with mail delivery) prevented claimant from receiving the decisions; on what date claimant first learned about each of the decisions; when, if at all, claimant was advised of their right to appeal those decisions; and what ultimately prompted claimant to file their requests for hearing on October 30, 2024, as opposed to some earlier date. If the record on remand shows that claimant *did* receive the administrative decisions, the ALJ should inquire as to what circumstances, if any, prevented claimant from filing requests for hearing at an earlier date and when those circumstances ceased. Additionally, the ALJ should inquire as to whether a Department representative advised claimant, around the time that claimant filed a waiver request in July 2024, that claimant could also request a hearing on the administrative decisions; and whether claimant first learned, after the ALJ's order denying claimant's waiver request, that claimant could file late requests for hearing on the administrative decisions.

Orders No. 25-UI-281311 and 25-UI-281316 therefore are reversed, and these matters remanded for a hearing on whether claimant's late requests for hearing on either or both of the November 22, 2021, PUA determination and decision # 121042 should be allowed and, if so, the merits of those decisions.

DECISION: Orders No. 25-UI-281311 and 25-UI-281316 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 6, 2025

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 25-UI-281311 and 25-UI-281316 or return these matters to EAB. Only timely applications for review of the subsequent orders will cause these matters to return to EAB.

¹ 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.

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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 الاستئناف بأوريغون و ذلك بإتباع الإرشادات المدرجة أسفل القرار.

Farsi

توجه - این حکم بر مزایای بیکاری شما تأثیر 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 دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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