

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0412

Reversed & Remanded

PROCEDURAL HISTORY AND FINDINGS OF FACT: On September 1, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not able to work during each of the weeks including June 7, 2020 through July 11, 2020 (weeks 24-20 through 28-20, the weeks at issue) and was denied benefits for those weeks (decision # 125014). On September 21, 2020, decision # 125014 became final without claimant having filed a request for hearing. On November 18, 2020, the Department served notice of an administrative decision, based in part on decision # 125014, concluding that claimant received benefits to which he was not entitled and assessing an overpayment of \$1,612 in regular unemployment insurance benefits and \$2,400 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay to the Department (decision # 93044). On December 4, 2020, claimant filed a late request for hearing on decision # 125014 and a timely request for hearing on decision # 93044. On April 20, 2021, ALJ Frank conducted a consolidated hearing, and on April 28, 2021 issued Order No. 21-UI-165733, dismissing claimant's request for hearing on decision # 125014 as late. Also on April 28, 2021, ALJ Frank issued Order No. 21-UI-165734, affirming decision # 93044. On May 10, 2021, claimant filed applications for review of Orders No. 21-UI-165733 and 21-UI-165734 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 21-UI-165733 and 21-UI-165734. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2021-EAB-0413 and 2021-EAB-0412).

CONCLUSIONS AND REASONS: Order No. 21-UI-165733 is set aside and the matter remanded to determine whether claimant had good cause to file a late request for hearing on decision # 125014 and, if he did, the merits of that decision. Because the existence of an overpayment depends on whether or not claimant was able to work, available for work, and actively seeking work during the weeks at issue, Order No. 21-UI-165734 is also set aside, and the matter remanded.

Late request for hearing. 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 decision # 125014 was due by September 21, 2020. Because claimant did not file his request for hearing on that decision until December 4, 2020, the request for hearing was late. At hearing, claimant testified that he received decision # 125014 within about 10 days of when the Department mailed it, and that he read it and understood that he had until September 21, 2020 to file a timely appeal. Audio record at 12:12 to 12:42. Claimant also testified that he mailed a handwritten letter to the Department, requesting a hearing on decision # 125014, on September 17, 2020. Audio Record at 13:15 to 13:28. However, the record does not show that the Department ever received the letter, and claimant was unable to locate or produce a copy of the letter. Further, claimant later testified that he mailed the handwritten request for hearing to the address that was listed on the “notice of overpayment”—i.e., decision # 93044—when he received the latter decision and before he filed his requests for hearing on both decisions online; but then testified that he was unsure of when he had received decision # 93044, and had been confused by the ALJ’s question of which address he had sent his request for hearing to. Audio Record at 19:33 to 21:15.

As a result of claimant’s confused and seemingly-conflicting testimony, it is unclear on this record if claimant mailed a handwritten request for hearing on decision # 125014 on September 17, 2020, or if he instead did not do so until after he received decision # 93044, some two months later. Further inquiry is required to resolve this discrepancy.

If claimant did mail a request for hearing on decision # 125014 prior to the timely appeal deadline, which was not received by the Department, claimant may have filed his second request for hearing on decision # 125014 late due to factors beyond his control. If so, however, further inquiry is also needed to determine when, if at all, claimant actually learned that the Department had not received his earlier request for hearing on decision # 125014, or else what prompted him to file the late request for hearing when he did, and whether he did so within a reasonable time after the factors which prevented him from filing a timely request for hearing ceased to exist. If the ALJ determines that claimant had good cause to file the late request for hearing, inquiry should be made on the merits of decision # 125014.

Overpayment. ORS 657.310(1) provides that an individual who received benefits to which the individual was not entitled is liable to either repay the benefits or have the amount of the benefits deducted from any future benefits otherwise payable to the individual under ORS chapter 657. That provision applies if the benefits were received because the individual made or caused to be made a false statement or misrepresentation of a material fact, or failed to disclose a material fact, regardless of the individual’s knowledge or intent. *Id.* In addition, an individual who has been disqualified for benefits under ORS 657.215 for making a willful misrepresentation is liable for a penalty in an amount of at least 15, but not greater than 30, percent of the amount of the overpayment. ORS 657.310(2).

Order No. 21-UI-165734 concluded that claimant was liable for overpaid regular and FPUC benefits as a matter of law because decision # 125014, which created the overpayment, became “final and binding without a timely appeal.” Order No. 21-UI-165734 at 5. Because the record was insufficiently developed to determine whether claimant had good cause to file a late request for hearing on decision # 125014 and, if so, whether he was able to work, available for work, and actively seeking work during the weeks

at issue, the record also contains insufficient evidence to determine whether claimant was overpaid benefits for the weeks at issue. Order No. 21-UI-165734 must therefore be reversed and remanded pending a determination on the administrative decision which created the overpayment.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary for a determination of whether claimant had good cause to file a late request for hearing on decision # 125014, Orders No. 21-UI-165733 and 21-UI-165734 are reversed, and these matters are remanded.

DECISION: Orders No. 21-UI-165733 and 21-UI-165734 are set aside, and these matters remanded for further proceedings consistent with these orders.

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

DATE of Service: June 9, 2021

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 21-UI-165733 and 21-UI-165734 or return these matters to EAB. Only timely applications 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 ໄດ້ ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

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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