

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0585

Reversed & Remanded
Late Requests for Hearing Allowed
Merits Hearings Required

PROCEDURAL HISTORY: On May 14, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was disqualified from receiving unemployment insurance benefits effective March 1, 2020 (decision # 101346). On June 3, 2020, decision # 101346 became final without claimant having filed a request for hearing. On November 18, 2020, the Department served notice of another administrative decision, based in part on decision # 101346, concluding that claimant received benefits to which he was not entitled and assessing an overpayment of \$1,095 in regular unemployment insurance benefits and \$3,600 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay to the Department (decision # 150004). On December 8, 2020, decision # 150004 became final without claimant having filed a request for hearing. On February 27, 2021, claimant filed late requests for hearing on decisions # 101346 and # 150004.

ALJ Kangas considered claimant's requests, and on March 23, 2021 issued Orders No. 21-UI-163225 and 21-UI-163227, dismissing claimant's requests for hearing on decisions # 101346 and # 150004, respectively, as late, subject to claimant's right to renew the requests by responding to appellant questionnaires by April 6, 2021. On April 6, 2021, claimant filed timely responses to the appellant questionnaires. On June 8, 2021, the Office of Administrative Hearings (OAH) mailed letters to claimant notifying him that Orders No. 21-UI-163225 and 21-UI-163227 were vacated and that hearings would be scheduled to address whether claimant had good cause to file the late requests for hearing on decisions # 101346 and # 150004 and, if so, the merits of those decisions. On June 25, 2021, ALJ Monroe conducted separate hearings on decisions # 101346 and # 150004. On July 2, 2021, ALJ Monroe issued Order No. 21-UI-169817, re-dismissing claimant's request for hearing on decision # 101346 as late without a showing of good cause, leaving decision # 101346 undisturbed. Also on July 2, 2021, ALJ Monroe issued Order No. 21-UI-169818, concluding that claimant had filed a timely request for hearing on decision # 150004, and modifying decision # 150004 by concluding that claimant had been overpaid \$391 in regular benefits and \$1,800 in FPUC benefits that claimant was required to repay to the Department. On July 21, 2021, claimant filed applications for review of Orders No. 21-UI-169817 and 21-UI-169818 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 21-UI-169817 and 21-UI-169818. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2021-EAB-0585 and 2021-EAB-0586).

Based on a *de novo* review of the entire consolidated record in these cases, and pursuant to ORS 657.275(2), the portion of Order No. 21-UI-169818 concluding that claimant had filed a timely request for hearing on decision # 150004 is **adopted**. The remainder of these decisions address whether claimant had good cause to file a late request for hearing on decision # 101346 and the merits of decisions # 101346 and # 150004.

FINDINGS OF FACT: (1) Claimant filed his initial claim for benefits on September 12, 2019, and restarted his claim on April 6, 2020. Claimant subsequently claimed benefits for the weeks including March 29, 2020 through May 9, 2020 (weeks 14-20 through 19-20). The Department paid claimant a total of \$1,095 in regular benefits and \$3,600 in Federal Pandemic Unemployment Compensation (FPUC) benefits for those weeks. The \$3,600 in FPUC benefits erroneously included two payments of \$600 for the week of March 29, 2020 through April 4, 2020 (week 14-20). The Department did not pay FPUC benefits to claimant for the week of April 12, 2020 through April 18, 2020 (week 16-20).

(2) On May 14, 2020, the Department issued decision # 101346, concluding that claimant had voluntarily quit working for G&R Specialty Foods, Inc. without good cause and was disqualified from receiving benefits effective March 1, 2020 (week 10-20). Claimant received decision # 101346 in the ordinary course of mail, but did not understand what it meant. Transcript, decision # 101346, at 11.

(3) On May 21, 2020, claimant contacted the Department's WorkSource office in La Grande, Oregon, and informed their representative that he had returned to work for his other employer Wildhorse Resort and Casino.¹

(4) On June 3, 2020, decision # 101346 became final without claimant having filed a request for hearing. On November 18, 2020, the Department issued decision # 150004, concluding that claimant had been overpaid benefits because he voluntarily quit work without good cause and had not filed a timely request for hearing on decision # 101346.

(5) On November 25, 2020, claimant mailed a letter dated November 24, 2020 to the Department indicating that he had received the overpayment decision on November 6, 2020,² that he had filed for benefits due to a reduction in hours from his employer Wildhorse Resort and Casino rather than his having quit his "winter job at G&R Specialty Foods," and that he therefore believed there was "confusion" over his status with those two employers. Exhibit 4, decision # 150004, at 21.

¹ EAB has taken notice of this fact, which is 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 fact will remain in the record.

² The Department had previously issued one or more decisions regarding the same overpayment matter on November 6, 2020, which were vacated and superseded by decision # 150004. Exhibit 1, decision # 150004, at 1.

(6) The Department later determined that claimant had earned sufficient remuneration from work performed after his separation from G&R Specialty Foods, Inc. to end the disqualification resulting from decision # 101346 on April 11, 2020.

CONCLUSIONS AND REASONS: Orders No. 21-UI-169817 and 21-UI-169818 are set aside and these matters remanded for hearings on the merits of decisions # 101346 and # 150004.

Late Request for Hearing on Decision # 101346. 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.

A request for hearing may be filed on forms provided by the Employment Department or similar offices in other states. Use of the form is not required provided the party specifically requests a hearing or otherwise expresses a present intent to appeal and it can be determined what issue or decision is being appealed. OAR 471-040-0005(1) (July 15, 2018).

The request for hearing on decision # 101346 was due by June 3, 2020. Because claimant did not file his request for hearing until February 27, 2021, the request for hearing was late. Order No. 21-UI-169817 concluded that claimant did not show that he had good cause to file the late request for hearing on decision # 101346. Order No. 21-UI-169817 at 3. While the order under review concluded that the February 27, 2021 request for hearing was late, the record shows that on November 25, 2020, claimant had filed a request for hearing on decision # 101346.

The Department construed the November 25, 2020 letter as a request for hearing on decision # 150004 (the overpayment decision), a conclusion which Order No. 21-UI-169818 affirmed. Transcript, decision # 150004, at 4; Order No. 21-UI-169818 at 3. However, because the letter contained sufficient detail³ regarding claimant's concern over the decision stating that he had voluntarily quit without good cause (decision # 101346), the letter is construed as a request for hearing on that administrative decision as well. Therefore, claimant filed a late request for hearing on decision # 101346 on November 25, 2020.

Claimant testified at hearing that he did not file a request for hearing on decision # 101346 prior to the timely appeal deadline because he had "talked to someone over at the La Grande . . . employment office," had explained the situation to them, and then they told him "they were going to assist [him] in this and not to worry. They were going to take care of it and that's the last [he] heard of them." Transcript, decision # 101346, at 11. Claimant stated similarly in his November 25, 2020 letter. While claimant was not able to recall when he had spoken to this person, Department records show that he spoke to a representative at the La Grande WorkSource office on May 21, 2020, which was prior to the timely appeal deadline for decision # 101346. Based on this record, it is reasonable to conclude that the

³ See, e.g., *Kroetch v. Employment Department*, 289 Or App 291, 409 P3d 60 (2017) (submission of a statement or documentation of facts that is inconsistent with an existing determination, by itself, is not a request for hearing; the submission must include some indication that the party is aware the underlying decision exists and that the party wants to challenge it).

May 21, 2020 call to the La Grande office was the call in which he was told that they would “take care of it” for him. The record therefore shows that claimant did not understand the implications of decision # 101346, contacted a representative from the Department prior to the timely appeal deadline, and was told that they would “take care of” the matter for him. Under those circumstances, claimant’s reliance on the Department representative’s assurance was reasonable. Therefore, claimant’s failure to file a request for hearing prior to June 3, 2020 was due to reasonable reliance on another—the Department representative—and, as such, was an excusable mistake. Accordingly, claimant established good cause to extend the filing deadline for a request for hearing on decision # 101346 a “reasonable time.”

Claimant’s November 25, 2020 letter shows that claimant was aware of the fact that the Worksource office had not “taken care of” the matter regarding the voluntary quit decision as of the date he received the November 6, 2020 overpayment decisions, which were ultimately superseded by decision # 150004. Because the record does not indicate that claimant knew, prior to that date that the Worksource office was not taking care of the matter, claimant more likely than not first learned that fact on the date on which he received either decision # 150004 or the administrative decisions it superseded. The record also does not show when claimant received those administrative decisions. As such, the earliest date on which claimant demonstrably knew about the overpayment decisions—and, by extension, the fact that the Worksource office had not addressed the voluntary quit matter—was November 24, 2020, the date on which he drafted the letter. Therefore, the factors which caused claimant not to file a timely request for hearing on decision # 101346 ceased to exist on that day. Because claimant mailed the letter the next day, claimant filed the late request for hearing within a reasonable time after those factors ceased to exist. Claimant established good cause to extend the filing deadline for a request for hearing on decision # 101346 to November 25, 2020.

Voluntary Quit and Overpayment. Because claimant had good cause to file the late request for hearing on decision # 101346, he is entitled to a hearing on the merits of that decision to determine whether he voluntarily quit working for G&R Specialty Foods, Inc. with good cause. Additionally, regardless of whether the record on remand shows that claimant quit for good cause, further inquiry is needed to determine whether claimant was underpaid or overpaid benefits. Order No. 21-UI-169818 found that claimant “received FPUC benefits for weeks 14-20 and 15-20 in an amount totaling \$1,800; due to an agency error, the Department issued two \$600 payments to claimant for week 14-20.” Order No. 21-UI-169818 at 6. While this finding is correct, the order under review failed to consider the fact that claimant was not paid FPUC benefits for the week of April 12, 2020 through April 18, 2020 (week 16-20). Per § 2104 of the CARES Act, individuals are, through weeks ending on or prior to July 31, 2020, eligible to receive FPUC benefits in the amount of \$600 per week “with respect to any week for which the individual is . . . otherwise entitled under the State law to receive regular compensation.” Pub. L. 116-136, § 2104(b)(1), (e)(2). Because the record shows that claimant earned sufficient remuneration to end the disqualification from the voluntary quit as of April 11, 2020, and that he was therefore eligible for regular benefits as of week 16-20, claimant was eligible for, but was not paid, \$600 in FPUC benefits for week 16-20. Therefore, the record on remand should be developed to determine whether the extra \$600 in FPUC benefits paid to claimant for week 14-20 should properly be allocated to week 16-20, and, in either case, whether any underpayment or overpayment of benefits to claimant remains.

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 voluntarily quit work without good cause and whether claimant was underpaid or overpaid benefits, Orders No. 21-UI-169817 and 21-UI-169818 are reversed, and these matters are remanded.

DECISION: Orders No. 21-UI-169817 and 21-UI-169818 are set aside, and these matters remanded for further proceedings consistent with this order.

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

DATE of Service: August 17, 2021

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 21-UI-169817 and 21-UI-169818 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

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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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