

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-1003

Order No. 21-UI-180453 ~ Reversed ~ Late Request for Hearing Allowed-Merits Hearing Required
Order No. 21-UI-180451 ~ Affirmed ~ Overpayment No Penalties

PROCEDURAL HISTORY: On August 31, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause, disqualifying claimant from receiving unemployment insurance benefits effective May 30, 2020 (decision # 130253). On September 20, 2021, decision # 130253 became final without claimant having filed a request for hearing. On September 20, 2021, the Department served notice of an administrative decision concluding that claimant was overpaid benefits for the weeks of September 6, 2020 through April 10, 2021 (37-20 through 14-21) and April 18, 2021 through May 29, 2021 (weeks 16-21 through 21-21), and was required to repay \$536 in regular unemployment insurance benefits and \$4,842 in Pandemic Emergency Unemployment Compensation (PEUC) benefits.

On September 27, 2021, claimant filed a late request for hearing on decision # 130253 and a timely request for hearing on the September 20, 2021 administrative decision. On November 15, 2021, ALJ Monroe conducted a consolidated hearing on decision # 130253 and the September 20, 2021 administrative decision. On November 23, 2021, ALJ Monroe issued Order No. 21-UI-180453, dismissing claimant's request for hearing on decision # 130253 as late without good cause, leaving decision # 130253 undisturbed. Also on November 23, 2021, ALJ Monroe issued Order No. 21-UI-180451, affirming the September 20, 2021 administrative decision. On November 26, 2021, claimant filed applications for review of Orders No. 21-UI-180453 and 21-UI-180451 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 21-UI-180453 and 21-UI-180451. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2021-EAB-1003 and 2021-EAB-1002).

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 her 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.

To the extent claimant asserted that the hearing proceedings were unfair or the ALJ was biased, the assertion is without merit. EAB reviewed the hearing record in its entirety, which shows that the ALJ inquired fully into the matters at issue and gave all parties reasonable opportunity for a fair hearing as required by ORS 657.270(3) and (4) and OAR 471-040-0025(1) (August 1, 2004).

Based on a *de novo* review of the entire consolidated record in these cases, and pursuant to ORS 657.275(2), Order No. 21-UI-180451 concluding that the Department overpaid claimant \$536 in regular benefits and \$4,842 in PEUC benefits that claimant must repay under applicable state and federal law is **adopted**. The remainder of this decision addresses whether claimant's late request for hearing on decision # 130253 should be allowed.

FINDINGS OF FACT: (1) Prior to August 31, 2021, claimant had experienced trouble with her mail service, which included instances where she had not received mail that she had expected to receive. During this time, claimant was aware that the Department was investigating the circumstances surrounding her work separation from the employer and any entitlement to benefits based upon that work separation.

(2) On August 31, 2021, the Department mailed decision # 130253 to claimant's address on file with the Department. Decision # 130253 stated, "You have the right to appeal this decision if you do not believe it is correct. Your appeal must be received no later than September 20, 2021." Exhibit 1 at 7. The United States Postal Service did not return the Department's mailing as undeliverable.

(3) On September 3, 2021, claimant emailed the Department to ask whether they had "come to any conclusions about [her] claim." Exhibit 4 at 3. A representative from the Department replied that the Department had issued a decision on claimant's claim and that she "should watch for it in the mail." Exhibit 4 at 3.

(4) Claimant did not receive decision # 130253 in her mail prior to September 20, 2021, nor was she aware of the substance of decision # 130253.

(5) Between September 20, 2021 and September 27, 2021, claimant received the Department's September 20, 2021 administrative decision assessing an overpayment against claimant. During this time period, claimant called the Department and learned about the existence of decision #130253

(6) On September 27, 2021, claimant filed a late request for hearing on decision # 130253.

CONCLUSIONS AND REASONS: Order No. 21-UI-180453 is reversed and this matter remanded for a hearing on the merits of decision # 130253.

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.

Claimant's request for hearing on decision # 130253 was due by September 20, 2021. Because she did not file her request for hearing until September 27, 2021, the request was late. The order under review concluded that claimant had failed to show good cause for her late request for hearing because she failed to state unequivocally during the hearing that she did not receive decision # 130253 and instead indicated that she may have "misplaced" the decision after she retrieved it from her mailbox. Order No. 21-UI-180453 at 3. Without "an unequivocal statement of non-receipt," the order under review reasoned that claimant could not demonstrate good cause to support her late request for hearing. Order No. 21-UI-180453 at 3. However, the record does not support that conclusion.

The record shows that claimant had good cause for her late request for hearing. Contrary to the order under review's conclusion, claimant did testify unequivocally that she did not receive decision # 130253 in the mail after it was mailed by the Department on August 31, 2021 and prior to the September 20, 2021 timely filing deadline. Transcript at 39. Claimant's testimony in this regard was consistent with the record evidence, which demonstrated that claimant had experienced troubles with her mail delivery prior to August 31, 2021, including instances where she did not receive mail she had expected to receive. Although claimant also testified that it was possible that the letter containing decision # 130253 may have been misplaced by her after she retrieved it from her mailbox because "anything's possible," the preponderance of the evidence supports the conclusion that claimant never actually received decision # 130253 after it was mailed by the Department on August 31, 2021. Transcript at 51.

The mail delivery problems that claimant experienced that likely prevented her from receiving decision # 130253 were factors beyond her reasonable control. This factor ceased to exist between September 20, 2021 and September 27, 2021 when claimant received the September 20, 2021 overpayment decision, contacted the Department, and first became aware of the existence of decision # 130253. Claimant then filed her request for hearing on September 27, 2021, which was within seven days of first learning of the existence of decision # 130253. Claimant therefore filed her late request for hearing on decision # 130253 within the seven-day "reasonable time" period. Because claimant established good cause and filed within a reasonable time, her late request for hearing is allowed, and claimant is entitled to a hearing on the merits of decision # 130253.

DECISION: Order No. 21-UI-180453 is set aside, as outlined above, and a merits hearing is required. Order No. 21-UI-180451 is affirmed.

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

DATE of Service: January 4, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-180453 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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 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 الاستئناف 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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