

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0635

Order No. 22-UI-194901 Reversed & Remanded
Order No. 22-UI-194903 Affirmed ~ Request for Hearing Dismissed

PROCEDURAL HISTORY AND FINDINGS OF FACT: On April 7, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision denying claimant's request for waiver of an overpayment of \$7,142 in regular unemployment insurance (regular UI) benefits (decision # 100904). On April 11, 2022, the Department served notice of an administrative decision denying claimant's request for waiver of an overpayment of \$7,072 in regular UI benefits (decision # 104214). Claimant filed timely requests for hearing on decisions # 100904 and 104214. On May 18, 2022, ALJ Monroe conducted a combined hearing¹ on decisions # 100904 and 104214. On May 19, 2022, the Department issued two administrative decisions: decision # 163516, which vacated decision # 104214, and decision # 164541, which granted claimant's request for a waiver of the \$7,072 overpayment that was originally denied by decision # 104214. On May 27, 2022, ALJ Monroe issued Orders No. 22-UI-194901 and 22-UI-194903, dismissing claimant's requests for hearing on decisions # 100904 and 104214, respectively, because the Department had issued decision # 164541 on May 19, 2022. On June 1, 2022, claimant filed applications for review of Orders No. 22-UI-194901 and 22-UI-194903 with the Employment Appeals Board (EAB).

EVIDENTIARY MATTER: At hearing, the ALJ admitted Exhibits 1 and 2 into evidence, but did not mark the exhibits. On remand, the ALJ should identify and mark all exhibits previously entered into the record.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 22-UI-194901 and 22-UI-194903. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2022-EAB-0635 and 2022-EAB-0636).

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), Order No. 22-UI-194903 is **adopted**. The remainder of this decision addresses Order No. 22-UI-194901, regarding whether the ALJ should have dismissed claimant's request for hearing on decision # 100904.

¹ Three other linked cases were also adjudicated at the May 18, 2022 hearing. Those cases are not at issue here, as claimant did not file applications for review on the resulting orders.

CONCLUSIONS AND REASONS: Order No. 22-UI-194901 is reversed, and this matter remanded for a determination of whether dismissal of claimant's request for hearing on decision # 100904 was appropriate and, if not, the merits of that decision.

Under ORS 657.270(7)(a)(D), an ALJ may dismiss a request for hearing if the issues are resolved by cancellation or amendment of the decision that is the subject of the hearing request. The order under review found that decision # 164541 reversed decision # 100904 by granting claimant's request for waiver of repayment of the \$7,072 overpayment. Order No. 22-UI-194901 at 1. As a result, the order under review dismissed claimant's request for hearing on decision # 100904 under ORS 657.270.² Order No. 22-UI-194901 at 1. The record as developed does not support this basis for dismissal or the finding upon which it is based.

The record shows that decision # 100904 denied claimant's request for a waiver of a \$7,142 overpayment, while decision # 104214 denied claimant's request for a waiver of a \$7,072 overpayment. Decision # 164541, issued on May 19, 2021, allowed claimant's request for a waiver of a \$7,072 overpayment. Neither decision # 164541, which allowed claimant's request for waiver of the \$7,072 overpayment, nor decision # 163516, which vacated an April 11, 2022 administrative decision that denied the request for waiver of a \$7,072 overpayment, explicitly identified decision # 104214 as the administrative decision that was vacated and replaced. However, because the dates and overpayment amounts of the administrative decision discussed in both decisions # 164541 and 163516 match those of decision # 104214, it is reasonable to conclude that they both refer to decision # 104214. The same cannot be said for decision # 100904, which was issued on a different date and concerned a different overpayment amount.

It is not clear from the record whether decisions # 100904 and 104214 both refer to the same overpayment at different points in time, resulting from two separate waiver requests, or whether they refer to two entirely separate overpayments for which claimant is (or was) separately liable. Therefore, further development of the record is necessary to determine whether decision # 100904 is still in effect, and whether claimant therefore is still liable for repayment of the \$7,142 overpayment or any portion thereof. On remand, the ALJ should ask questions necessary to clarify the record in this regard. Further, if the record on remand shows that decision # 100904 remains in effect, the ALJ should issue an order on the merits of decision # 100904.

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's request for hearing on decision # 100904 should have been dismissed and, if not, the merits of that decision, Order No. 22-UI-194901 is reversed, and this matter is remanded.

² The order under review also cited OAR 471-040-0035 (August 1, 2004) as a basis for dismissing the request for hearing. Order No. 22-UI-194901 at 1–2. However, that rule does not permit the ALJ to dismiss a request for hearing on their own initiative in this type of scenario. In order for an ALJ to dismiss a request for hearing under OAR 471-040-0035(2)(a), due to the issuance of a new or amended determination or decision that grants the appellant that which was placed in issue by the request for hearing, the Director or their authorized representative must first request such a dismissal. The record does not show that the Department requested that the ALJ dismiss the request for hearing.

DECISION: Order No. 22-UI-194901 is set aside, and this matter remanded for further proceedings consistent with this order. Order No. 22-UI-194903 is affirmed.

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

DATE of Service: July 14, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-194901 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 EAB Decision 2022-EAB-0636 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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