

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0798

Affirmed
Late Requests for Hearing Dismissed

PROCEDURAL HISTORY: On December 18, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work during the weeks including March 1, 2020 through December 12, 2020 (weeks 10-20 through 50-20) and therefore was not eligible to receive unemployment insurance benefits for those weeks and until the reason for the denial had ended (decision # 142133). Also on December 18, 2020, the Department served notice of an administrative decision concluding that claimant had received retirement pay in an amount greater than or equal to his weekly benefit amount during weeks 10-20 through 50-20, and that he was therefore disqualified from receiving benefits for those weeks and until the reason for the denial had ended (decision # 143423). On January 7, 2021, decisions # 142133 and 143423 became final without claimant having filed requests for hearing. On March 7, 2022, the Department served notice of an administrative decision concluding that claimant received benefits to which he was not entitled for weeks 11-20 through 26-20 and assessing an overpayment of \$10,368 in regular unemployment insurance (regular UI) benefits and \$7,800 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay to the Department (decision # 130041). On March 8, 2022, the Department served notice of an administrative decision concluding that claimant received benefits to which he was not entitled for weeks 27-20 through 50-20 and assessing an overpayment of \$6,480 in regular UI benefits, \$8,424 in Pandemic Emergency Unemployment Compensation (PEUC) benefits, \$648 in Extended Benefits (EB), and \$2,400 in FPUC benefits that claimant was required to repay to the Department (decision # 134707). On March 28, 2022, decision # 130041 became final without claimant having filed a request for hearing. On March 29, 2022, decision # 134707 became final without claimant having filed a request for hearing. On May 16, 2022, claimant filed late requests for hearing on decisions # 142133, 143423, 130041, and 134707.

On June 24, 2022, ALJ Monroe conducted a combined hearing on decisions # 142133 and 143423. Also on June 24, 2022, ALJ Monroe conducted a combined hearing on decisions # 130041 and 134707. On June 30, 2022, ALJ Monroe issued Orders No. 22-UI-197321 and 22-UI-197320, dismissing claimant's requests for hearing on decisions # 142133 and 143423, respectively, as late without showings of good cause, and leaving those decisions undisturbed. On July 1, 2022, ALJ Monroe issued Orders No. 22-UI-197336 and 22-UI-197333, dismissing claimant's requests for hearing on decisions # 130041 and

134707, respectively, as late without showings of good cause, and leaving those decisions undisturbed. On July 16, 2022, claimant filed applications for review of Orders No. 22-UI-197321, 22-UI-197320, 22-UI-197336, and 22-UI-197333 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 22-UI-197321, 22-UI-197320, 22-UI-197336, and 22-UI-197333. For case-tracking purposes, this decision is being issued in quadruplicate (EAB Decisions 2022-EAB-0796, 2022-EAB-0797, 2022-EAB-0795, and 2022-EAB-0798).

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 him 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.

In his written argument, claimant asserted that it would be “against equity and good conscience to require” claimant to repay the sums assessed in decisions # 130041 and 134707, and requested a waiver of repayment. Claimant’s Written Argument at 2. As the ALJ explained to claimant at the hearing on those decisions, however, a waiver of repayment falls outside the scope of review in these cases. *See* Transcript, Orders No. 22-UI-197336 and 22-UI-197333, at 13. First, as discussed in the orders under review, claimant did not show that he had good cause to file the late requests for hearing on the overpayment decisions (decisions # 130041 and 134707). As such, the ALJ lacked jurisdiction to consider the merits of those decisions, including whether the overpayments should have been assessed.

Even if claimant was found to have had good cause for filing the late requests for hearing on decisions # 130041 and 134707, however, the ALJ still would have lacked jurisdiction to consider whether waivers of repayment should be granted. The underlying administrative decisions that claimant appealed only addressed whether the overpayments should be *assessed*, and *not* whether claimant was eligible for a waiver of repayment for those overpayments. Whether claimant is eligible for waivers in these cases is a separate question that may only be addressed by the Department after claimant has filed waiver requests on the specific overpayments assessed in decisions # 130041 and 134707. If claimant wishes to request those waivers, he is advised to do so using the contact information in the note at the end of this decision.

EAB reviewed the entire consolidated hearing record. On *de novo* review and pursuant to ORS 657.275(2), the orders under review are **adopted**.

DECISION: Orders No. 22-UI-197321, 22-UI-197320, 22-UI-197336, and 22-UI-197333 are affirmed.

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

DATE of Service: August 29, 2022

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.

NOTE: This decision affirms orders which denied requests for hearing on administrative decisions that assessed overpayments of benefits. The Department may defer recovery or completely waive the overpaid amount if certain standards are met. To make a request for Waiver of Overpayment Recovery, call 503-947-1995 or email OED_Overpayment_unit@employ.oregon.gov. You must submit waiver applications that correspond to the program for which you were overpaid benefits. You may have been overpaid benefits under both state and federal benefits programs and may need to file two separate waiver requests. To access a State UI Overpayment Waiver application go online to <https://unemployment.oregon.gov/waivers> and click the link for “State UI Overpayment Waiver”. To access a Federal Program Overpayment Waiver application go online to <https://unemployment.oregon.gov/waivers> and click the link for “Federal Program Overpayment Waiver”.

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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 ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄໍາຕັດສິນນີ້.

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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