

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0506

*Order No. 23-UI-222236 Reversed ~
Late Request for Hearing Allowed, Merits Hearing Required
Order No. 23-UI-222719 ~ Reversed and Remanded*

PROCEDURAL HISTORY: On March 5, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not actively seeking work during the weeks including July 26, 2020 through August 15, 2020 (weeks 31-20 through 33-20) and was therefore ineligible to receive unemployment insurance benefits during those weeks (decision # 83353). On March 25, 2021, decision # 83353 became final without claimant having filed a request for hearing. On November 29, 2021, the Department served notice of an administrative decision, based in part on decision # 83353, concluding that claimant received benefits to which she was not entitled and assessing an overpayment of \$300 in Lost Wages Assistance (LWA) benefits that claimant was required to repay to the Department (decision # 0558009). On December 7, 2021, claimant filed a late request for hearing on decision # 83353 and a timely request for hearing on decision # 0558009.

On April 14, 2023, ALJ Lucas conducted hearings regarding decision # 83353 and 0558009. On April 17, 2023 ALJ Lucas issued Order No. 23-UI-222236, dismissing claimant's late request for hearing on decision # 83353, leaving that decision undisturbed. On April 20, 2023, ALJ Lucas issued Order No. 23-UI-222719, affirming decision # 0558009. On May 1, 2023, claimant filed applications for review of Orders No. 23-UI-222236 and 23-UI-222719 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-222236 and 23-UI-222719. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2023-EAB-0505 and 2023-EAB-0506).

WRITTEN ARGUMENT: EAB considered claimant's written argument in reaching its decisions.

EVIDENTIARY MATTER: At the hearing on April 14, 2023 for decision # 0558009, claimant offered into evidence a document containing an email conversation between her and a Department representative. The ALJ admitted this document, and stated it would be marked as Exhibit 2. Audio Recording 34:11 to 34:17. However, this document is not in the record for decision # 0558009 and another document, a copy of Order No. 23-UI-222236, is marked as Exhibit 2 in that record instead.

EAB has added the document that claimant offered into the record for decision # 0558009 to correct the error and has marked it as Exhibit 3. A copy of the exhibit is provided to the parties with this decision. Any party that objects to our admitting Exhibit 3 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 exhibit will remain in the record for decision # 0558009. This document already appears in the record for decision # 83353 as Exhibit 2.

FINDINGS OF FACTS: (1) Claimant claimed benefits for the period of August 2, 2020 through August 8, 2020 (week 32-20). This is the week at issue. The Department paid claimant \$300 in LWA benefits for this week.

(2) On March 5, 2021, the Department mailed decision # 83353 to claimant's address on file with the Department, which was claimant's correct address at the time. The administrative decision was not returned to the Department as undeliverable. Decision # 83353 concluded that claimant was not actively seeking work during the week at issue, and therefore ineligible for benefits for that week.

(3) Claimant did not have decision # 83353 in the paperwork that she had collected from the Department. Claimant has at least one prior instance where her mail was stolen from her current address.

(4) On November 29, 2021, the Department mailed decision # 0558009 to claimant's address on file with the Department. This decision concluded that claimant received benefits to which she was not entitled and assessed a \$300 overpayment. Claimant received decision # 0558009. At that point, claimant first learned that the Department had determined she was ineligible for benefits for the week at issue because the Department determined she was not actively seeking work during that week.

(5) On December 7, 2021, claimant submitted requests for hearing on decisions # 83353 and 0558009. Claimant also filed timely requests for hearing in cases 2022-UI-58586 and 2022-UI-58583.¹

CONCLUSIONS AND REASONS: Claimant's late request for hearing on decision # 83353 is allowed. Order No. 23-UI-222236 is therefore reversed and the matter remanded for a hearing on the merits of decision # 83353. Order No. 23-UI-222719 is set aside and the matter remanded for further development of the record to determine the amount of benefits, if any, that claimant was overpaid.

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.

¹ EAB has taken notice of claimant's timely filings in cases 2022-UI-58586 and 2022-UI-58583, which are contained in the Department's 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.

The request for hearing on decision # 83353 was due by March 25, 2021. Because claimant did not file her request for hearing until December 7, 2021, the request was late. Order No. 23-UI-222236 concluded that the administrative decision was received in the normal course of the mail because it was not returned as undeliverable and because there is a presumption that a letter duly directed and mailed was received in the regular course of the mail.² Order No. 23-UI-222236 at 3. The record does not support this conclusion.

The record shows that claimant did not file a timely request for hearing because, more likely than not, she never received a copy of decision # 83353. Claimant testified that she did not recall receiving decision # 83353 and that when reviewing the paperwork she had received from the Department she did not have it. Transcript at 8. Further, she testified that she has had issues with her mail in the past “We had some mail stolen from us, but I do not recall the specific date.” Transcript at 9. Additionally, claimant’s prompt response to decision # 0558009 and subsequent decisions that she disagreed with suggests that if she received # 83353 in the normal course of the mail, she would have timely filed a request for hearing. While claimant did not directly testify that she did not receive decision # 83353, her lack of recall regarding receiving it, her lack of having the physical document in her paperwork, her prior mail issues, as well as her subsequent actions when receiving administrative decisions she disagreed with, together suggest that more likely than not claimant did not receive decision # 83353 in the normal course of the mail.

Claimant’s failure to receive decision # 83353 constituted a factor beyond claimant’s reasonable control that prevented her from filing a timely request for hearing on that decision. When claimant received # 0558009, she was alerted to the fact that she had been disqualified from receiving benefits. Given that this decision was mailed on November 29, 2021, it is more likely than not that claimant did not receive it until November 30, 2021 at the earliest. Claimant filed her request for hearing on December 7, 2021, which is within the seven-day reasonable time period after the factors that prevented a timely filing ceased to exist. Therefore, claimant late request for hearing on decision # 83353 is allowed, and claimant is entitled to a hearing on the merits of that decision.

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. 23-UI-222719 concluded that claimant was liable for an overpayment of LWA benefits for the week at issue based in part on the finding that claimant’s late request for hearing on decision # 83353 was denied and that decision # 83533 “remained undisturbed.” Order 23-UI-222719 2, 6. As discussed above, however, the record shows that claimant had good cause to file the late request for hearing on decision # 83353, and that she is therefore entitled to a hearing on the merits of that decision.

² See ORS 40.135(1)(q).

A determination of whether claimant was overpaid benefits rests on whether or not claimant was actively seeking work, such that she would be ineligible to receive benefits for the week at issue. Because that matter has not yet been heard, further development of the record is necessary before a determination can be made as to whether claimant was overpaid benefits.

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 determinations of whether claimant was actively seeking work, as well as, the amount of benefits, if any, that claimant was overpaid, Orders No. 23-UI-222236 and 23-UI-222719 are reversed, and these matters are remanded.

DECISION: Order No. 23-UI-222236 and 23-UI-222719 are set aside, and these matters remanded for further proceedings consistent with this order.

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

DATE of Service: June 7, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 23-UI-222236 and 23-UI-222719 or return these matters to EAB. Only a timely application for review of the subsequent order will cause this matter 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 ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

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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