

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0538

Late Applications for Review Allowed
Order No. 23-UI-219573 Affirmed ~ Ineligible for Pandemic Unemployment Assistance
Order No. 23-UI-219582 Affirmed ~ Overpayment, No Penalties

PROCEDURAL HISTORY: On June 3, 2022, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was not eligible to receive PUA benefits effective March 27, 2020. On June 10, 2022, the Department served notice of an administrative decision, based in part on the June 3, 2022 administrative decision, concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing an overpayment of \$16,605.00 in PUA benefits, \$21,000.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits, and \$1,800.00 in Lost Wages Assistance (LWA) benefits that claimant was required to repay to the Department, as well as a \$5,640.75 monetary penalty. Claimant filed timely requests for hearing on the June 3, 2022 and June 10, 2022 administrative decisions.

On March 13, 2023, ALJ Wardlow conducted a combined hearing on the June 3, 2022 and June 10, 2022 administrative decisions. On March 20, 2023, ALJ Wardlow issued Order No. 23-UI-219573, affirming the June 3, 2023 administrative decision by concluding that claimant was not eligible to receive PUA benefits for the weeks including February 9, 2020 through December 19, 2020 (weeks 07-20 through 51-20) and December 27, 2020 through September 4, 2021 (weeks 53-20 through 35-21). On March 21, 2023, ALJ Wardlow issued Order No. 23-UI-219582, modifying the June 10, 2022 administrative decision by concluding that claimant was liable for the overpayments assessed by that administrative decision, but that claimant had not willfully made a misrepresentation and failed to report a material fact, and was therefore not liable for a monetary penalty.¹ On April 10, 2023, Orders No. 23-UI-219573 and 23-UI-219582 became final without claimant having filed applications for review with

¹ Also on March 13, 2023, ALJ Wardlow conducted a separate hearing on an administrative decision which had denied claimant's requests for waiver of the overpayments assessed by the June 10, 2023 administrative decision. On March 21, 2023, ALJ Wardlow issued Order No. 23-UI-219583, reversing the waiver denial decision by concluding that claimant's request for waiver of the overpaid PUA, FPUC, and LWA benefits should be granted. Order No. 23-UI-219583 has since become final without any party having filed an application for review. However, it is not clear from Department records whether the Department has given effect to Order No. 23-UI-219583 and granted waivers as indicated by that order. Claimant may wish to contact the Department to confirm that these waivers have been granted.

the Employment Appeals Board (EAB). On May 9, 2023, claimant filed late applications for review of Orders No. 23-UI-219573 and 23-UI-219582 with EAB.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-219573 and 23-UI-219582. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2023-EAB-0538 and 2023-EAB-0537).

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of claimant’s written statements included with the applications for review, and has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 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.

FINDINGS OF FACT: (1) Order No. 23-UI-219573, mailed to claimant on March 20, 2023, stated, “You may appeal this decision by filing the attached form Application for Review with the Employment Appeals Board within 20 days of the date that this decision is mailed.” Order No. 23-UI-219573 at 6. Order No. 23-UI-219573 also stated on its Certificate of Mailing, “Any appeal from this Order must be filed on or before April 10, 2023 to be timely.”

(2) Order No. 23-UI-219582, mailed to claimant on March 21, 2023, stated, “You may appeal this decision by filing the attached form Application for Review with the Employment Appeals Board within 20 days of the date that this decision is mailed.” Order No. 23-UI-219582 at 8. Order No. 23-UI-219582 also stated on its Certificate of Mailing, “Any appeal from this Order must be filed on or before April 10, 2023 to be timely.”

CONCLUSIONS AND REASONS: Claimant’s late applications for review of Orders No. 23-UI-219573 and 23-UI-219582 are allowed. Orders No. 23-UI-219573 and 23-UI-219582 are affirmed.

Late applications for review. An application for review is timely if it is filed within 20 days of the date that the Office of Administrative Hearings (OAH) mailed the order for which review is sought. ORS 657.270(6); OAR 471-041-0070(1) (May 13, 2019). The 20-day filing period may be extended a “reasonable time” upon a showing of “good cause.” ORS 657.875; OAR 471-041-0070(2). “Good cause” means that factors or circumstances beyond the applicant’s reasonable control prevented timely filing. OAR 471-041-0070(2)(a). A “reasonable time” is seven days after the circumstances that prevented the timely filing ceased to exist. OAR 471-041-0070(2)(b). A late application for review will be dismissed unless it includes a written statement describing the circumstances that prevented a timely filing. OAR 471-041-0070(3).

The applications for review of Orders No. 23-UI-219573 and 23-UI-219582 were due by April 10, 2023. Because claimant did not file her applications for review until May 9, 2023, the applications for review were late. On a statement enclosed with the applications for review, claimant noted:

I appealed the administrative decision prior to the deadline of April 10, 2023. The appeal was sent on contact form on the OED website. I received an email today regarding the appeal for review stating that I would need to file the appeal on this form.

EAB Exhibit 1 at 1. Based on this statement, it appears that claimant made an attempt to file applications for review of the orders under review prior to the timely filing deadline, but used the wrong form and filed requests with the Department rather than applications for review with EAB. Further, the Department apparently did not contact claimant to notify her of her mistake for at least a month after she initially contacted them. Had the Department responded to claimant in a timely fashion, it is reasonable to conclude that claimant would have been able to file applications for review on or prior to the April 10, 2023 deadline. Because the Department did not respond to claimant until well after the deadline had passed, she had no reason to know that she had not correctly filed appeals of the orders under review. Therefore, claimant's failure to file timely applications for review was the result of factors or circumstances beyond claimant's reasonable control.

Further, claimant's statement indicated that she received notice "today"—i.e., the same day as she filed the applications for review—that she was required to use the application for review form to correctly appeal the orders under review. EAB Exhibit 1 at 1. Therefore, the record shows that the factors or circumstances which prevented claimant's timely filings ceased on the date she filed the late applications for review. As such, claimant filed the late applications for review within the seven-day "reasonable time" period of when the factors or circumstances ceased.

For the above reasons, claimant had good cause to file the late applications for review, and the late applications for review are granted.

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

DECISION: The late applications for review of Orders No. 23-UI-219573 and 23-UI-219582 are allowed. Orders No. 23-UI-219573 and 23-UI-219582 are affirmed.

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

DATE of Service: June 14, 2023

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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymzmo.com/s3/5552642/EAB-Customer-Service-Survey>.

You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



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 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
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