

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0673

Applications for Review Dismissed Without Prejudice

PROCEDURAL HISTORY: On December 13, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision denying claimant's December 5, 2022 request for a waiver of an overpayment of Pandemic Unemployment Assistance (PUA) and Federal Pandemic Unemployment Compensation (FPUC) benefits that the Department had previously assessed (decision # 113312). On January 3, 2023, decision # 113312 became final without claimant having filed a request for hearing. On January 10, 2023, the Department served notice of an administrative decision denying claimant's January 1, 2023 request for a waiver of an overpayment of PUA and FPUC benefits that the Department had previously assessed (decision # 90024). On January 17, 2023, claimant filed a late request for hearing on decision # 113312 and a timely request for hearing on decision # 90024. On May 26, 2023, ALJ Janzen conducted hearings, and on May 30, 2023 issued Order No. 23-UI-226330 dismissing claimant's late request for hearing on decision # 113312, and Order No. 23-UI-226329 affirming decision # 90024. On June 14, 2023, claimant filed applications for review of Orders No. 23-UI-226330 and 23-UI-226329 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-226330 and 23-UI-226329. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2023-EAB-0673 and 2023-EAB-0672).

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), and with the exception of the EAB exhibit noted below, 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.

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1). The additional evidence consists of EAB Decisions 2023-EAB-0578 and 2023-EAB-0579 and Orders No. 23-UI-230807 and 23-UI-230808, regarding the underlying PUA determination and overpayment cases which preceded these matters. This evidence 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) On July 1, 2020, claimant filed an initial claim for PUA benefits. Claimant subsequently claimed benefits for the weeks including December 27, 2020 through January 16, 2021 (weeks 53-20 through 02-21) and January 24, 2021 through March 13, 2021 (weeks 04-21 through 10-21). These are the weeks at issue. The Department paid claimant a total of \$2,050 in PUA benefits and \$3,000 in FPUC benefits for the weeks at issue.

(2) On July 20, 2021, the Department served notice of an administrative decision concluding that claimant was not eligible for PUA benefits effective December 27, 2020. On August 9, 2021, the July 20, 2021 PUA determination became final without claimant having filed a request for hearing.

(3) On September 13, 2022, the Department served notice of an administrative decision based in part on the July 20, 2021 PUA determination, concluding that claimant had been overpaid \$2,050 in PUA benefits and \$3,000 in FPUC benefits for the weeks at issue that claimant was required to repay (decision # 131709). On October 3, 2022, decision # 131709 became final without claimant having filed a request for hearing.

(4) On December 5, 2022, claimant filed a request for waiver of the overpayments assessed by decision # 131709. On December 12, 2022, the Department mailed decision # 113312 to claimant's address on file with the Department. Decision # 113312 stated, "If you disagree with the amount of the overpayment, you have the right to appeal this decision. Any appeal from this decision must be filed on or before January 3, 2023 to be timely." Order No. 23-UI-226330, Exhibit 1 at 2. On January 1, 2023, claimant filed another request for waiver of the overpayments assessed by decision # 131709. On January 3, 2023, decision # 113312 became final without claimant having filed a request for hearing.

(5) On January 17, 2023, claimant filed late requests for hearing on the July 20, 2021 PUA determination and decision # 131709. Claimant also filed a late request for hearing on decision # 113312 at that time. On May 4, 2023, ALJ Janzen conducted hearings on the July 20, 2021 PUA determination and decision # 131709. On May 5, 2023, ALJ Janzen issued Orders No. 23-UI-224095 and 23-UI-224097, dismissing claimant's late requests for hearing on the July 20, 2021 PUA determination and decision # 131709, leaving those administrative decisions undisturbed. Claimant filed timely applications for review of those orders.

(6) On June 28, 2023, EAB issued EAB Decisions 2023-EAB-0578 and 2023-EAB-0579, reversing Orders No. 23-UI-224095 and 23-UI-224097, allowing claimant's late requests for hearing on the July 20, 2021 PUA determination and decision # 131709 and remanding those matters for hearings on the merits. On July 18, 2023, ALJ Janzen conducted remand hearings on the July 20, 2021 PUA determination and decision # 131709. On July 19, 2023, ALJ Janzen issued Order No. 23-UI-230807, reversing the July 20, 2021 PUA determination by concluding that claimant was eligible for PUA benefits for the weeks from December 27, 2020 through March 31, 2021 (weeks 53-20 through 10-21). Also on July 19, 2023, ALJ Janzen issued Order No. 23-UI-230808, reversing decision # 131709 by concluding that claimant was not paid PUA or FPUC benefits to which she was not entitled, and therefore was not liable to repay those benefits.

(7) As of the date of this decision, no applications for review have been filed on Orders No. 23-UI-230807 or 23-UI-230808.¹

CONCLUSIONS AND REASONS: Claimant's applications for review of Orders No. 23-UI-226330 and 23-UI-226329 are dismissed without prejudice because the matters are moot.

On June 14, 2023, claimant filed applications for review of Orders No. 23-UI-226330 and 23-UI-226329, which dismissed claimant's late request for hearing on a request for an overpayment waiver, and affirmed a denial of an overpayment waiver request. The waiver requests at issue were premised on an overpayment of PUA and FPUC benefits that the Department had previously assessed because of a determination that claimant had not been eligible for PUA benefits. After EAB remanded the underlying matters of the PUA determination and overpayment for further development of the record, remand hearings were held on both matters. On July 19, 2023, ALJ Janzen issued orders that reversed the administrative decisions on the underlying PUA determination and overpayment matters, finding that claimant *was* eligible for PUA benefits for the weeks at issue, and that claimant therefore was *not* overpaid benefits that she was required to repay to the Department.

The sum effect of these subsequent developments is that claimant is no longer liable for an overpayment of benefits, which means that no overpayment balance remains to potentially be waived. A ruling on the merits of either waiver denial at issue here would therefore have no practical effect on claimant's rights or obligations. As such, the matters are moot, and claimant's applications for review are dismissed without prejudice.²

DECISION: The applications for review filed June 14, 2023 are dismissed without prejudice.

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

DATE of Service: July 27, 2023

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymoz.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.

¹ EAB has taken notice of these facts, which are contained in Employment Department records OAR 471-041-0090(1) 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.

² Because these matters are moot, it is unnecessary for EAB to determine, at this time, whether to allow claimant's request for hearing on decision # 113312.



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
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.