

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0720**

*Late Application for Review Allowed  
Reversed & Remanded*

**PROCEDURAL HISTORY:** On March 15, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision denying claimant’s request for a waiver of overpayments of Federal Pandemic Unemployment Compensation (FPUC), Pandemic Emergency Unemployment Compensation (PEUC), and Lost Wages Assistance (LWA) benefits that the Department had previously assessed on October 7, 2021 (decision # 104949). Claimant filed a timely request for hearing. On September 13, 2022, ALJ Blam-Linville conducted a hearing, and on September 21, 2022 issued Order No. 22-UI-203231, partially affirming decision # 104949 by granting claimant’s request for a waiver of overpayment as to LWA benefits, but not ruling on whether claimant’s FPUC or PEUC overpayments should be waived.<sup>1</sup> On October 11, 2022, Order No. 22-UI-203231 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On June 27, 2023, claimant filed a late application for review with EAB.

**EVIDENTIARY MATTER:** EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is the written statement and attachments included with claimant’s application for review which serve to explain why the application for review was filed late. 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.

<sup>1</sup> The hearing addressed decision # 122738 in addition to decision # 104949. Audio Record at 2:55 to 3:15. Decision # 122738 granted a waiver of an overpayment of regular UI benefits and was addressed in a separate order, not under review by EAB.

**FINDINGS OF FACT:** (1) On October 7, 2021, the Department issued an administrative decision concluding that claimant received FPUC, PEUC, and LWA benefits to which he was not entitled and assessed an overpayment of those benefits. That administrative decision subsequently became final.

(2) On February 10, 2022, claimant filed a request for a waiver of the outstanding balances of the overpayments assessed in the October 7, 2021 administrative decision, which included \$8,778 in PEUC benefits, \$11,235 in FPUC benefits, and \$1,800 in LWA benefits. These are the overpayments at issue.

(3) On March 15, 2022, the Department issued decision # 104949, denying claimant's request for a waiver of the FPUC, PEUC, and LWA overpayments. Claimant requested a hearing, which was conducted on September 13, 2022.

(4) On September 21, 2022, Order No. 22-UI-203231 was mailed to claimant and claimant's attorney at their respective addresses of record. The order concluded that claimant's request for a waiver of the LWA overpayment was granted, but did not address the FPUC or PEUC overpayments. Order No. 22-UI-203231 at 4. Order No. 22-UI-203231 also 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. 22-UI-203231 at 4. Additionally, the order's Certificate of Mailing stated, "Any appeal from this Order must be filed on or before October 11, 2022 to be timely." Order No. 22-UI-203231 became final on October 11, 2022, without claimant having filed an application for review.

(5) On November 1, 2022, the Department mailed claimant a "Notice of Intent to Intercept Federal Payments" as part of an effort to recover the FPUC and PEUC overpayments at issue in decision # 104949. EAB Exhibit 1 at 7.

(6) On December 22, 2022, April 5, 2023, June 16, 2023, claimant's attorney mailed letters to the Department or to the Office of Administrative Hearings (OAH) requesting that they consider the waiver granted by Order No. 22-UI-203231 to apply to the FPUC and PEUC overpayment balances that were the subject of claimant's appeal in which that order was issued, or to amend Order No. 22-UI-203231 to reflect that the waiver was granted as to those overpayments, respectively. The Department and OAH did not comply with these requests and continued efforts to recover the regular UI overpayment through at least June 7, 2023.

(7) On June 27, 2023, claimant's attorney emailed an additional request to the Department that they address the applicability of Order No. 22-UI-203231 to the FPUC and PEUC overpayments. EAB Exhibit 1 at 1. This email was considered a late application for review of Order No. 22-UI-203231.

**CONCLUSION AND REASONS:** Claimant's late application for review is allowed. Order No. 22-UI-203231 is set aside and the matter remanded for further proceedings.

**Late Application 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 application for review of Order No. 22-UI-203231 was due October 11, 2022. Because claimant did not file his application for review until June 27, 2023, the application for review was late. Claimant provided a written statement and supporting documents with the application for review. These documents suggest that because Order No. 22-UI-203231 appeared, on its face, to be fully favorable to claimant, he had no reason to disagree with the conclusions of that order or file an application for review of it prior to it becoming final. It can be inferred from these documents that neither claimant nor his attorney realized that Order No. 22-UI-203231 referred to the waived overpayment as involving LWA benefits only, without specifically ruling on the waiver of FPUC and PEUC overpayments, because after claimant received notice of continued collection efforts on those overpayments in early November 2022, claimant’s attorney sent a letter to the Department on December 22, 2022 theorizing only that the notice was issued because “news of waivers had not yet made its way to the Benefit Payment Control Recovery unit prior to the creation of the Notice.” EAB Exhibit 1 at 7. In fact, the continued recovery efforts were the result of the order neglecting to specifically rule on the waivers of FPUC and PEUC benefits. Given the favorable conclusions of Order No. 22-UI-203231 to claimant, the apparent drafting error in that decision that went unnoticed by claimant and his attorney until after the order became final constituted a factor beyond claimant’s reasonable control that prevented timely filing of his application for review, which constituted good cause to extend the deadline for timely filing.

The subsequent efforts by claimant’s attorney to resolve the matter without appealing to EAB an otherwise fully favorable decision to claimant involved sending a total of four letters and contacting OAH or the Department “several times by phone.” EAB Exhibit 1 at 3. Under the circumstances, claimant’s decision to attempt to remedy the situation through this course of action is understandable. The record does not demonstrate that OAH or the Department unequivocally refused to entertain claimant’s requests, and his attorney’s June 27, 2023 email to the Department continued to reiterate this request. As long as the Department or OAH continued to give hope to claimant and his attorney that such a request might eventually be acted upon, the factor beyond claimant’s reasonable control that delayed his filing of an application for review persisted. Accordingly, claimant’s June 27, 2023 late application for review was filed within a “reasonable time.” Therefore, claimant has shown good cause to file his late application for review, and the late application for review is allowed.

**Overpayment Waiver.** The order under review concluded that claimant was not at fault for the LWA overpayment at issue in decision # 104949, that his basic expenses exceeded his income at the time of the hearing, and that requiring repayment of the LWA overpayment would therefore be contrary to equity and good conscience and repayment should be waived. Order No. 22-UI-203231 at 3-4. The record supports these conclusions. As decision # 104949 specified that the wavier at issue concerned overpayments of FPUC and PEUC benefits in addition to LWA benefits, and the order under review concluded only that the Department “should grant the claimant’s request for a waiver of their *Lost Wages Assistance benefits* overpayment,” it is likely that a scrivener’s error occurred in drafting the order, since the same findings that led to the LWA waiver being granted would logically apply to the FPUC and PEUC waivers. Order No. 22-UI-203231 at 4 (emphasis added). On remand, an order should be issued specifically addressing the waivers of the FPUC and PEUC overpayments, in addition to

granting the LWA waiver. Because the record as presently constituted may be sufficient to issue such an order, an additional hearing on remand is only required if the order on remand does not waive recovery of the full balance of the overpayments at issue in decision # 104949.

**DECISION:** Claimant's late application for review is allowed. Order No. 22-UI-203231 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service: July 7, 2023**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-203231 or return this matter 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 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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