

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0791

Order No. 23-UI-226035 – Late Application for Review Allowed, Late Request for Hearing Dismissed
Order No. 23-UI-226036 – Late Application for Review Allowed, Late Request for Hearing Dismissed
Order No. 23-UI-226034 - Late Application for Review Allowed, Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On August 2, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was disqualified from receiving unemployment insurance benefits effective May 16, 2021 (decision # 103857). On August 22, 2022, decision # 103857 became final without claimant having filed a request for hearing. On August 30, 2022, the Department served notice of an administrative decision concluding that claimant received \$10,095 in regular unemployment insurance (regular UI) benefits and \$4,500 in Federal Pandemic Unemployment Compensation (FPUC) benefits to which they were not entitled and were required to repay to the Department (decision # 133657). On September 19, 2022, decision # 133657 became final without claimant having filed a request for hearing. On December 23, 2022, the Department served notice of an administrative decision concluding that claimant willfully made misrepresentations and failed to report material facts to obtain benefits, and assessing an overpayment of \$18,248 in combined benefits under state and federal benefits programs, a \$5,474.40 monetary penalty, and a 52-week disqualification from future benefits (decision # 194623). On January 12, 2023, decision # 194623 became final without claimant having filed a request for

hearing. On January 17, 2023, claimant filed late requests for hearing on decisions # 103857, 133657, and 194623.

ALJ Kangas considered claimant's requests, and on May 24, 2023 issued Orders No. 23-UI-226035, 23-UI-226036, and 23-UI-226034 respectively dismissing claimant's requests for hearing on decisions # 103857, 133657, and 194623 as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by June 7, 2023. On June 13, 2023, Orders No. 23-UI-226035, 23-UI-226036, and 23-UI-226034 became final without claimant having filed a response to the appellant questionnaire or an application for review with the Employment Appeals Board (EAB). On June 15, 2023, claimant filed a late response to the appellant questionnaire and late applications for review of Orders No. 23-UI-226035, 23-UI-226036, and 23-UI-226034 with EAB. On July 18, 2023, ALJ Kangas mailed letters stating that the Office of Administrative Hearings (OAH) would not consider claimant's questionnaire response or issue additional orders regarding the matters because the questionnaire response was late. These matters come before EAB based on claimant's late applications for review of Orders No. 23-UI-226035, 23-UI-226036, and 23-UI-226034.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-226035, 23-UI-226036, and 23-UI-226034. For case-tracking purposes, this decision is being issued in triplicate (EAB Decisions 2023-EAB-0792, 2023-EAB-0793, and 2023-EAB-0791).

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 appellant questionnaire response claimant provided with their application 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 FACTS: (1) On August 2, 2022, the Department mailed decision # 103857 to claimant's address on file with the Department. Decision # 103857 stated, "You have the right to appeal this decision if you do not believe it is correct. Your request for appeal must be received by August 22, 2022." Order No. 23-UI-226035 Exhibit 1 at 2.

(2) On August 30, 2022, the Department mailed decision # 133657 to claimant's address on file with the Department. Decision # 133657 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 September 19, 2022." Order No. 23-UI-226036 Exhibit 1 at 2.

(3) On December 23, 2022, the Department mailed decision # 194623 to claimant's address on file with the Department. Decision # 194623 stated, "To be timely, any appeal from this decision must be filed on or before January 12, 2023." Order No. 23-UI-226034 Exhibit 1 at 1.

(4) Order No. 23-UI-226035, mailed to claimant on May 24, 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-226035 at 2. Order No. 23-UI-226035

also stated on its Certificate of Mailing, “Any party may appeal this Order by filing a Request for Review with the Employment Appeals Board no later than June 13, 2023.”

(5) Order No. 23-UI-226036, mailed to claimant on May 24, 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-226036 at 2. Order No. 23-UI-226036 also stated on its Certificate of Mailing, “Any party may appeal this Order by filing a Request for Review with the Employment Appeals Board no later than June 13, 2023.”

(6) Order No. 23-UI-226034, mailed to claimant on May 24, 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-226034 at 2. Order No. 23-UI-226034 also stated on its Certificate of Mailing, “Any party may appeal this Order by filing a Request for Review with the Employment Appeals Board no later than June 13, 2023.”

(7) Claimant did not receive Orders No. 23-UI-226035, 23-UI-226036, and 23-UI-226034 until June 14, 2023.

CONCLUSIONS AND REASONS: Claimant’s late applications for review are allowed. Orders No. 23-UI-226035, 23-UI-226036, and 23-UI-226034 are affirmed. Claimant’s late requests for hearing on decisions # 103857, 133657, and 194623 are dismissed.

Late Applications for Review. The first issue before EAB is whether claimant’s late applications for review of Orders No. 23-UI-226035, 23-UI-226036, and 23-UI-226034 should be allowed. 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).

Claimant’s applications for review of Orders No. 23-UI-226035, 23-UI-226036, and 23-UI-226034 were due no later than June 13, 2023. Because claimant did not file their applications for review until June 15, 2023, the applications for review were late.

However, on claimant’s appellant questionnaire response, claimant was asked questions intended to elicit information about when claimant received the administrative decisions in these cases and when claimant filed their requests for hearing. EAB Exhibit 1 at 1. Claimant wrote that the administrative decisions were received on “06/14/23” and claimant made their hearing requests on “06/15/23”. EAB Exhibit 1 at 1. However, decisions # 103857, 133657, and 194623 were mailed on August 2, 2022, August 30, 2022, and December 23, 2022, respectively, and claimant requested hearings for them on January 17, 2023. Therefore, claimant’s answers only make sense if what claimant was intending to convey was that they received Orders No. 23-UI-226035, 23-UI-226036, and 23-UI-226034 on June 14, 2023 and filed late applications for review of them on June 15, 2023. Accordingly, EAB interprets

claimant's answers to mean they received Orders No. 23-UI-226035, 23-UI-226036, and 23-UI-226034 on June 14, 2023 and filed late applications for review of them on June 15, 2023

Thus, claimant did not receive the orders under review until the day after the timely deadline to appeal them. Claimant therefore established that a circumstance beyond their reasonable control prevented a timely filing of the applications for review. That circumstance ceased to exist on June 14, 2023, when claimant received the orders under review. Claimant filed their applications for review one day later on June 15, 2023. Claimant therefore showed good cause for the late applications for review and filed within a reasonable time. Accordingly, claimant's late applications for review of Orders No. 23-UI-226035, 23-UI-226036, and 23-UI-226034 are allowed.

Late Requests for Hearing. The second issue before EAB is whether claimant's late requests for hearing on decisions # 103857, 133657, and 194623 should be allowed. 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. The deadline to file a timely request for hearing on decision # 103857 was August 22, 2022. The deadline to file a timely request for hearing on decision # 133657 was September 19, 2022. The deadline to file a timely request for hearing on decision # 194623 was January 12, 2023. Because claimant did not file their requests for hearing on decisions # 103857, 133657, and 194623 until January 17, 2023, the requests for hearing were late.

In their appellant questionnaire response, claimant explained that they filed their hearing requests for decisions # 103857, 133657, and 194623 when they did because they received an overpayment bill from the Department. EAB Exhibit 1 at 2. Claimant stated they were not aware that they "needed to request a hearing request appeal." EAB Exhibit 1 at 2. Claimant further stated that they believed they had good cause for filing late because they are "not very educated on how to handle these things." EAB Exhibit 1 at 2.

Claimant failed to establish good cause to allow their late hearing requests. Claimant's lack of knowledge or familiarity with requesting a hearing did not constitute circumstances beyond their reasonable control that prevented them from requesting a hearing on time. Decisions # 103857, 133657, and 194623 explained claimant's right to appeal and each listed the applicable deadline for doing so. Nothing prevented claimant from carefully reading the administrative decisions, taking note of the appeal deadline listed, and filing an appeal for each decision by the respective deadline. To the extent claimant's lack of education in unemployment insurance led to confusion or to claimant having difficulty understanding the administrative decisions, claimant failed to establish good cause because under OAR 471-040-0010(1)(b)(B), good cause does not include not understanding the implications of a decision when it is received.

Similarly, although claimant's failure to be aware that they needed to request hearings until January 17, 2023 was likely the result of a mistake on claimant's part, it was not an "excusable mistake" within the meaning of the administrative rules because it did not, for example, raise a due process issue, and was

not the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply.

Because claimant failed to show that factors beyond their reasonable control or an excusable mistake prevented them from filing hearing requests on decisions # 103857, 133657, and 194623 by their respective deadlines, claimant failed to establish good cause to extend the filing deadlines. Accordingly, claimant's late requests for hearing are dismissed.

DECISION: Orders No. 23-UI-226035, 23-UI-226036, and 23-UI-226034 are affirmed.

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

DATE of Service: July 28, 2023

NOTE: You may appeal these decisions by filing for each 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.surveygizmo.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

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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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