

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0859**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On March 2, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision assessing an overpayment of \$1,800 of Lost Wages Assistance (LWA) benefits that claimant was liable to repay to the Department (decision # 0580656). On March 22, 2022, decision # 0580656 became final without claimant having filed a request for hearing. On April 12, 2022 claimant filed a late request for hearing on decision # 0580656. ALJ Kangas considered claimant's request, and on August 15, 2022 issued Order No. 22-UI-200542, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by August 29, 2022. On August 25, 2022, claimant filed a timely response to the appellant questionnaire. On November 2, 2022, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 22-UI-200542 was vacated and that a new hearing would be scheduled to determine whether claimant had good cause to file the late request for hearing and, if so, the merits of decision # 0580656. On July 11, 2023, ALJ Frank conducted a hearing, and on July 19, 2023 issued Order No. 23-UI-230874, allowing claimant's late request for hearing and affirming decision # 0580656. On August 4, 2023, claimant filed an application for review of Order No. 23-UI-230874 with the Employment Appeals Board (EAB).

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the portion of the order under review allowing claimant's late request for hearing on decision # 0580656 is **adopted**.

**FINDINGS OF FACTS:** (1) On March 31, 2020, claimant filed an initial claim for regular unemployment insurance (regular UI). The Department determined claimant had a valid claim for benefits with a weekly benefit amount of \$452.

(2) Claimant claimed benefits for the weeks including July 26, 2020 through September 5, 2020 (weeks 31-20 through 36-20). Claimant received his regular UI weekly benefit amount for each of those weeks. Claimant also received \$300 of LWA benefits for each of the weeks at issue. The total amount of LWA benefits claimant received for the weeks at issue was \$1,800.

(3) On March 9, 2021, the Department issued decision # 60625, concluding that claimant voluntarily quit work without good cause and was disqualified from receiving benefits effective March 22, 2020. On March 29, 2021, decision # 60625 became final without claimant having filed a request for hearing. On April 9, 2021, claimant filed a late request for hearing on decision # 60625. On July 28, 2021, OAH mailed a letter stating that a hearing would be scheduled to determine whether claimant had good cause to file the late request for hearing on decision # 60625 and, if so, the merits of that administrative decision. On September 8, 2023, OAH mailed claimant a notice scheduling a hearing on claimant's late appeal on decision # 60625 and, potentially, the merits of the decision, for September 21, 2023.<sup>1</sup>

**CONCLUSIONS AND REASONS:** Order No. 23-UI-230874 is set aside, and this matter remanded for further proceedings consistent with this order.

Section 5174 of the Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5207, confers authority on the President of the United States to provide financial assistance to individuals who, as a direct result of a major disaster, have necessary expenses and serious needs and are unable to meet such expenses or needs through other means. Under the provisions of Section 262(a) of the Continued Assistance for Unemployed Workers Act of 2020,<sup>2</sup> Congress defined "covered assistance" to mean supplemental lost wages payments made by the President under an emergency declaration related to the COVID-19 pandemic and pursuant to the authority of the Stafford Disaster Relief Act. Section 4(d) of the Presidential Memorandum Authorizing the Other Needs Assistance Program for Major Disaster Declaration Related to Coronavirus Disease 2019, available at, <https://trumpwhitehouse.archives.gov/presidential-actions/memorandum-authorizing-needs-assistance-program-major-disaster-declarations-related-coronavirus-disease-2019/>, provides as follows:

- (d) For purposes of this memorandum, the term "Eligible claimants" means claimants who:
  - (i) receive, for the week lost wages assistance is sought, at least \$100 per week of any of the following benefits:
    - (A) Unemployment compensation . . . [and]

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- (ii) provide self-certification that the claimant is unemployed or partially unemployed due to disruptions caused by COVID-19.

The order under review's basis for concluding that claimant was ineligible for LWA benefits, and therefore was overpaid LWA benefits, is that claimant was not eligible for regular UI during the weeks at issue. Order No. 23-UI-230874 at 5. The source of claimant's alleged ineligibility for regular UI was the conclusion reached by decision # 60625 that claimant voluntarily quit work without good cause and was disqualified from receiving regular UI benefits effective March 22, 2020. Department records show that claimant filed a late request for hearing on decision # 60625 and that issue, along potentially with

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<sup>1</sup> EAB has taken notice of these facts, which are contained in Employment Department 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.

<sup>2</sup> The Consolidated Appropriations Act, 2020, including Division N, Title II, Subtitle A, the Continued Assistance for Unemployed Workers Act of 2020 was signed into law on December 27, 2020.

the merits of decision # 60625, is scheduled to be heard on September 21, 2023. Thus, whether claimant was disqualified from receiving benefits effective March 22, 2020 is not settled. If decision # 60625 is reversed following the September 21, 2023 hearing, the basis for concluding that claimant was overpaid LWA benefits would be eliminated.

Accordingly, it is warranted to reverse Order No. 23-UI-230874 and remand this matter to OAH pending the outcome of claimant's late request for hearing of decision # 60625, scheduled to be heard on September 21, 2023.

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 a determination of whether claimant was overpaid LWA benefits, Order No. 23-UI-230874 is reversed, and this matter is remanded.

**DECISION:** Order No. 23-UI-230874 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:** September 14, 2023

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-230874 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.

**Employment Appeals Board - 875 Union Street NE | Salem, OR 97311**  
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