

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0880-R

Request for Reconsideration Allowed
EAB Decisions 2023-EAB-0879 through 2023-EAB-0883 Adhered to on Reconsideration
Late Applications for Review Dismissed

PROCEDURAL HISTORY AND FINDINGS OF FACT: On January 25, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was denied benefits for the week of July 19 through 25, 2020 because he was not able, available, and actively seeking work that week (decision # 65355). Also on January 25, 2021, the Department served notice of an administration decision concluding that claimant was denied benefits for the weeks from October 4 through November 21, 2020 because he was not able, available, and actively seeking work those weeks (decision # 72850). On February 16, 2021, decisions # 65355 and 72850 became final without claimant having filed a request for hearing. On April 8, 2021, the Department served notice of an administrative decision concluding that claimant was denied benefits for the weeks from August 2 through 22, 2020 because he was not able, available, and actively seeking work those weeks (decision # 64047). On April 28, 2021, decision # 64047 became final without claimant having filed a request for hearing.

On November 10, 2021, the Department served notice of an administrative decision based on decisions # 65355 and 72850, concluding that that claimant received \$1,062 in regular unemployment insurance (regular UI) benefits to which he was not entitled and must repay (decision # 141136). On November 23, 2021, the Department served notice of an administrative decision based on decisions # 65355 and 72850, concluding that claimant received \$177 in regular UI and \$600 in Federal Pandemic Unemployment Compensation (FPUC) benefits to which he was not entitled and must repay (decision # 85835).

On November 24, 2021, claimant filed a late requests for hearing on decisions # 65355, 72850 and 64047, and timely requests for hearing on decisions # 141136 and 85835. On April 7, 2023 ALJ Nyberg issued Orders No. 23-UI-221482, 23-UI-221477, 23-UI-221478, 23-UI-221480 and 23-UI-221474, finding that claimant withdrew his requests for hearing on decisions # 65355, 72850, 64047, 141136 and 85835, and dismissing the requests on that basis. On April 27, 2023, Orders No. 23-UI-221482, 23-UI-221477, 23-UI-221478, 23-UI-221480 and 23-UI-221474 became final without claimant having filed an application for review with the Employment Appeals Board (EAB).

On July 31, 2023, claimant filed late applications for review of Orders No. 23-UI-221482, 23-UI-221477, 23-UI-221478, 23-UI-221480 and 23-UI-221474 with EAB. Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of the orders, and on August 29, 2023, issued a decision in quintuplicate for case-tracking purposes (EAB Decisions 2023-EAB-0881, 2023-EAB-0880, 2023-EAB-0882, 2023-EAB-0883 and 2023-EAB-0879), dismissing claimant's late applications for review as late without a showing of good cause.

On August 29, 2023, claimant filed a timely request for reconsideration of EAB Decisions 2023-EAB-0881, 2023-EAB-0880, 2023-EAB-0882, 2023-EAB-0883 and 2023-EAB-0879 with EAB. Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its reconsideration of the decisions. For case-tracking purposes, this decision is being issued in quintuplicate (EAB Decisions 2023-EAB-0881-R, 2023-EAB-0880-R, 2023-EAB-0882-R, 2023-EAB-0883-R and 2023-EAB-0879-R). This decision is issued pursuant to EAB's authority under ORS 657.290(3).

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is a copy of claimant's request for reconsideration of EAB Decisions 2023-EAB-0881, 2023-EAB-0880, 2023-EAB-0882, 2023-EAB-0883 and 2023-EAB-0879, and has been marked as EAB Exhibit 2, and a copy provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 2 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(s) will remain in the record.

CONCLUSIONS AND REASONS: Claimant's request for reconsideration of EAB Decisions 2023-EAB-0881, 2023-EAB-0880, 2023-EAB-0882, 2023-EAB-0883 and 2023-EAB-0879 is allowed. The decisions are adhered to on reconsideration. Claimant's late applications for review of Orders No. 23-UI-221482, 23-UI-221477, 23-UI-221478, 23-UI-221480 and 23-UI-221474 are dismissed.

ORS 657.290(3) authorizes the Employment Appeals Board to reconsider any previous decision of the Employment Appeals Board, including "the making of a new decision to the extent necessary and appropriate for the correction of previous error of fact or law." "Any party may request reconsideration to correct an error of material fact or law, or to explain any unexplained inconsistency with Employment Department rule, or officially stated Employment Department position, or prior Employment Department practice." OAR 471-041-0145(1) (May 13, 2019). The request is subject to dismissal unless it includes a statement that a copy was provided to the other parties, and is filed on or before the 20th day after the decision sought to be reconsidered was mailed. OAR 471-041-0145(2).

Claimant filed his request for reconsideration of EAB Decisions 2023-EAB-0881, 2023-EAB-0880, 2023-EAB-0882, 2023-EAB-0883 and 2023-EAB-0879 in accordance with OAR 471-041-0145(2). Claimant's request for reconsideration therefore is allowed.

In his request for reconsideration, claimant asserted that he never withdrew his requests for hearing on decisions # 65355, 72850, 64047, 141136 and 85835. EAB Exhibit 2. Claimant also asked for evidence that he made fraudulent claims for benefits for the weeks at issue in decisions # 65355, 72850 and 64047, asserting that he was available for work, able to work, and looking for work during those weeks. EAB Exhibit 2. However, EAB Decisions 2023-EAB-0881, 2023-EAB-0880, 2023-EAB-0882, 2023-

EAB-0883 and 2023-EAB-0879 did not address those issues.¹ EAB's decisions dismissed claimant's applications for review of Orders No. 23-UI-221482, 23-UI-221477, 23-UI-221478, 23-UI-221480 and 23-UI-221474 because the applications for review were late, claimant did not include a written statement with his applications for review explaining why they were late, and therefore failed to establish good cause for the late applications for review. Claimant did not assert that EAB's decisions contained an error of material fact or law, or that they are inconsistent with Department rule, officially stated Department position, or prior Department practice. EAB Decisions 2023-EAB-0881, 2023-EAB-0880, 2023-EAB-0882, 2023-EAB-0883 and 2023-EAB-0879 therefore are adhered to on reconsideration. Claimant's late applications for review of Orders No. 23-UI-221482, 23-UI-221477, 23-UI-221478, 23-UI-221480 and 23-UI-221474 are dismissed, leaving those orders undisturbed.

DECISION: Claimant's request for reconsideration is allowed. On reconsideration, EAB Decisions 2023-EAB-0881, 2023-EAB-0880, 2023-EAB-0882, 2023-EAB-0883 and 2023-EAB-0879 are adhered to as clarified herein. The applications for review filed July 31, 2023 are dismissed. Orders No. 23-UI-221482, 23-UI-221477, 23-UI-221478, 23-UI-221480 and 23-UI-221474 remain undisturbed.

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

DATE of Service: September 21, 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.

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¹ Orders No. 23-UI-221482, 23-UI-221477, 23-UI-221478, 23-UI-221480 and 23-UI-221474 also did not address whether claimant made fraudulent claims for benefits for the weeks at issue in decisions # 65355, 72850 and 64047, or was available for work, able to work, and looking for work during those weeks. Nor did Decisions # 65355, 72850, 64047, 141136 and 85835 find that claimant made fraudulent claims for benefits for the weeks at issue in decisions # 65355, 72850 and 64047.



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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