

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0900

Late Application for Review Dismissed ~ Order No. 23-UI-226394

PROCEDURAL HISTORY: On March 17, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant received benefits to which he was not entitled, and assessing an overpayment of \$9,348 in regular unemployment insurance (regular UI) benefits and \$7,800 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay to the Department (decision # 100812). Claimant filed a timely request for hearing. On April 20, 2023, a hearing on decision # 100812 was convened and postponed until May 30, 2023. On May 30, 2023, ALJ Griffin conducted a hearing and issued Order No. 23-UI-226394, affirming decision # 100812. On June 20, 2023, Order No. 23-UI-226394 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On August 11, 2023, claimant filed a late application for review with EAB.¹

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 submitted with claimant's application for review, which 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) The overpayment assessed in decision # 100812 was based, in part, on a disqualification from benefits imposed in a December 1, 2020 administrative decision concluding that claimant had been discharged for misconduct (decision # 114053). Claimant filed a late request for hearing on decision # 114053. A hearing was scheduled for April 20, 2023, immediately preceding the

¹ The application for review was made in regard to Orders No. 23-UI-226394 and 23-UI-231001. EAB Exhibit 1 at 1. For the reasons explained below, EAB has not yet considered the application for review of Order No. 23-UI-231001, and therefore this decision only addresses claimant's application for review of Order No. 23-UI-226394.

hearing on decision # 100812, to determine whether claimant's late request for hearing on decision # 114053 should be allowed and, if so, the merits of decision # 114053.²

(2) On April 20, 2023, claimant failed to appear at the hearing on decision # 114053, but appeared at the hearing on decision # 100812. The Office of Administrative Hearings (OAH) subsequently issued Order No. 23-UI-222794, dismissing claimant's late request for hearing on decision # 114053 for failure to appear at the hearing. When claimant appeared at the April 20, 2023 hearing on decision # 100812, the matter was postponed so that claimant could request reopening of the hearing on decision # 114053. Claimant filed a timely request to reopen the April 20, 2023 hearing on decision # 114053.³

(3) On May 30, 2023, Order No. 23-UI-226394 was mailed to claimant's address of record. It 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-226394 at 3. Its Certificate of Mailing also stated, "Any appeal from this Order must be filed on or before June 20, 2023 to be timely."

(4) A hearing was scheduled for July 13, 2023 to determine whether claimant had good cause to reopen the hearing; if so, whether claimant's late request for hearing should be allowed; and, if so, the merits of decision # 114053. Claimant failed to appear for the July 13, 2023 hearing. On July 20, 2023, Order No. 23-UI-231001 was issued, again dismissing claimant's request for hearing for failure to appear at the July 13, 2023 hearing.⁴

CONCLUSIONS AND REASONS: Claimant's late application for review of Order No. 23-UI-226394 is dismissed.

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

² 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 facts will remain in the record.

³ 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 facts will remain in the record.

⁴ 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 facts will remain in the record.

includes a written statement describing the circumstances that prevented a timely filing. OAR 471-041-0070(3).

The deadline for filing an application for review of Order No. 23-UI-226394 was June 20, 2023. Claimant filed his application for review on August 11, 2023. Accordingly, the application for review of order No. 23-UI-226394 was late.

Claimant included a written statement with his application for review. Claimant wrote that the appeal of decision # 114053 “has been dismissed in my favor. As a result of winning [the appeal of decision # 114053], [decision # 100812] should also be dismissed, as my benefits are not disqualified.” EAB Exhibit 1 at 1. It can be inferred from claimant’s statement he believed that, at some time after June 20, 2023, action on claimant’s appeal of decision # 114053 resulted in that administrative decision being reversed or modified, and that he therefore decided to file a late application for review of Order No. 23-UI-226394. However, the record does not show that decision # 114053 has been reversed or modified on appeal.

The Department’s records show that claimant failed to appear for the most recent hearing regarding decision # 114053, which was held on July 13, 2023. As a result, claimant’s *request for hearing* in that matter, rather than decision # 114053 itself, was dismissed by Order No. 23-UI-231001. Accordingly, decision # 114053, and the disqualification from benefits it imposed, remain in effect. The record suggests that claimant’s confusion may have resulted from an August 10, 2023 phone call with the Department, after which the Department representative to whom claimant spoke noted, “[Advised claimant] we need confirmation from the judgement to do anything with the [overpayment], shows dismissal for the [discharge] hearing but not the [overpayment].”⁵ Claimant may have misinterpreted this statement to mean that decision # 114053 had been “dismissed” on the merits, as opposed to claimant’s *appeal of* decision # 114053 having been dismissed for his failure to appear at the July 13, 2023 hearing, leaving decision # 114053 undisturbed. Regardless of how claimant came to misunderstand the status of decision # 114053 and his appeal therefrom, the fact remains that decision # 114053 has not been reversed or modified. The record therefore does not show that claimant’s ongoing appeal of that matter prevented timely filing of an application for review of Order No. 23-UI-226394.

The good cause analysis focuses on whether, *prior to the deadline for timely filing*, a factor beyond claimant’s reasonable control prevented claimant from filing his application for review of Order No. 23-UI-226394. It can reasonably be inferred that, upon its receipt, claimant disagreed with the conclusions of Order No. 23-UI-226394. It can further be inferred that claimant believed he had a meritorious argument to advance on review of that order, specifically the unsettled posture of the underlying disqualification from benefits based on his ongoing appeal of decision # 114053. Claimant has not demonstrated that his mistaken belief—which he formed sometime after the timely filing deadline, likely during the August 10, 2023 phone call—prevented him from timely applying for review of Order No. 23-UI-226394. Claimant’s written statement did not assert that any other factor or circumstance delayed timely filing of his application for review. Therefore, claimant has not demonstrated that a

⁵ EAB has taken notice of this fact, which is 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.

factor or circumstance outside of his reasonable control prevented timely filing of the application for review. Claimant has not shown good cause to file the application for review of Order No. 23-UI-226394 late, and the late application for review is dismissed as to that order.

It should be noted that because claimant's August 11, 2023 application for review also referenced his appeal of decision # 114053, it was additionally treated as a late request to reopen the July 13, 2023 hearing on decision # 114053 and forwarded to the Office of Administrative Hearings (OAH) for further proceedings in that matter, in accordance with OAR 471-040-0040(6) (February 10, 2012).⁶ Therefore, EAB has taken no other action with regard to Order No. 23-UI-231001 based on claimant's August 11, 2023 application for review.

DECISION: The application for review filed August 11, 2023 is dismissed as to Order No. 23-UI-226394. Order No. 23-UI-226394 remains undisturbed.

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

DATE of Service: September 26, 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.

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.

⁶ OAR 471-040-0040(6) provides that OAH will treat as a request to reopen the hearing any application for review that a party files with the Employment Appeals Board or the Employment Department, where the filing party failed to appear at the hearing that led to the decision on appeal, unless the applicant specifically states in the application that the applicant does not wish to have the case reopened. In the event that the OAH subsequently denies the request to reopen the hearing, it shall return the case to the Employment Appeals Board, which will then proceed to review the merits of the substantive decision. The original application for review shall serve as the basis for the Employment Appeals Board's review of the merits of that decision.



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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