

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0900-R

*EAB Decision 2023-EAB-0900 Adhered to on Reconsideration
Late Application for Review of Order No. 23-UI-226394 Dismissed*

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 On September 26, 2023, EAB issued EAB Decision 2023-EAB-0900, dismissing claimant's late application for review. On its own motion, EAB reopened EAB Decision 2023-EAB-0900 for reconsideration. 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 September 29, 2023, letter from OAH and Order No. 23-UI-237252, 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 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 by a December 1, 2020, administrative decision concluding that claimant had been discharged for misconduct (decision # 114053). Claimant filed a late request for

¹ The application for review was made in regard to Orders No. 23-UI-226394 and 23-UI-231001. EAB Exhibit 1 at 1. As discussed below, Order No. 23-UI-231001 has been vacated by the Office of Administrative Hearings (OAH). This decision only addresses claimant's application for review of Order No. 23-UI-226394.

hearing on decision # 114053. A hearing was scheduled for April 20, 2023, immediately preceding the 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. 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 conducted on 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. On July 20, 2023, Order No. 23-UI-231001 was issued in regard to the July 13, 2023, hearing. It was later discovered that, due to a clerical error, the order did not reflect the ALJ's decision regarding the July 13, 2023, hearing.⁴ EAB took notice of Order No. 23-UI-231001 and relied on it as evidence in reaching EAB Decision 2023-EAB-0900.

(5) On September 29, 2023, OAH discovered that Order No. 23-UI-231001 had been issued in error and notified the parties and EAB by letter that Order No. 23-UI-231001 was vacated. EAB Exhibit 2 at 1. Accompanying that letter, OAH issued Order No. 23-UI-237252, reflecting the ALJ's decision regarding the July 13, 2023, hearing. Order No. 23-UI-237252 allowed claimant's request to reopen the April 20, 2023, hearing as to decision # 114053 and reversed decision # 114053 by concluding that claimant was discharged, but not for misconduct, and not disqualified from receiving benefits based on the work separation. EAB Exhibit 2 at 9.

(6) Based on the letter from OAH and the issuance of Order No. 23-UI-237252, EAB reopened EAB Decision 2023-EAB-0900 on its own motion for reconsideration.

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 The copy of Order No. 23-UI-231001 originally reviewed by EAB dismissed claimant's request for hearing for failure to appear. EAB Decision 2023-EAB-0900 at 2.

CONCLUSIONS AND REASONS: EAB Decision 2023-EAB-0900 is adhered to on reconsideration. Claimant’s late application for review of Order No. 23-UI-226394 is dismissed.

Reconsideration. ORS 657.290(3) authorizes the Employment Appeals Board, upon its own motion, 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.” EAB’s reliance on Order No. 23-UI-231001 in reaching EAB Decision 2023-EAB-0900 involved an error of fact, since Order No. 23-UI-231001 did not reflect the ALJ’s hearing decision in the matter at issue. Because OAH vacated Order No. 23-UI-231001 as having been issued in error and replaced it with Order No. 23-UI-237252, reconsideration of EAB Decision 2023-EAB-0900 is warranted. EAB has therefore reopened EAB Decision 2023-EAB-0900 for reconsideration on its own motion pursuant to its authority under ORS 657.290(3). For the reasons discussed below, EAB Decision 2023-EAB-0900 is adhered to on reconsideration.

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 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. Claimant is correct that decision # 114053 was reversed by the issuance of Order No. 23-UI-23725 and he was no longer subject to disqualification from benefits as a result of the work separation.⁵ However, as that reversal had not occurred as of the June 20, 2023 deadline for filing an application for review of Order No. 23-UI-226394, claimant did not demonstrate that this circumstance in any way prevented him from timely filing an application for review of Order No. 23-UI-226394. The record suggests that during the period for timely filing, claimant disagreed with Order No. 23-UI-226394, yet he did not file an application for review and instead pursued reopening of his appeal of the underlying disqualification from benefits that gave rise to the overpayment at issue in Order No. 23-UI-226394. Claimant has not shown that any factor or circumstance beyond his reasonable control prevented him from timely filing of an application for review of Order No. 23-UI-226394 while he also pursued his appeal of the underlying disqualification. Accordingly, he has not shown good cause to file

⁵ It also appears from the Department’s records that the Department has since cancelled the overpayment assessed by decision # 100812 and at issue in the present appeal. If so, EAB’s decision does not disturb the Department’s cancellation of the overpayment.

the application for review of Order No. 23-UI-226394 late, and the late application for review is dismissed.

DECISION: EAB Decision 2023-EAB-0900 is adhered to on reconsideration. Claimant's late application for review of Order No. 23-UI-226394 is dismissed.

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

DATE of Service: November 8, 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.



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 desisyong.

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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