

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0918**

*Order No. 23-UI-231734 – Reversed, Late Request for Hearing Allowed, Merits Hearing Required*  
*Order No. 23-UI-231716 – Reversed, Late Request for Hearing Allowed, Merits Hearing Required*

**PROCEDURAL HISTORY:** On October 20, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work for the weeks including May 10, 2020 through May 30, 2020 (weeks 20-20 through 22-20), and therefore was not eligible to receive unemployment insurance benefits for those weeks (decision # 64220). On November 9, 2020, decision # 64220 became final without claimant having filed a request for hearing. On November 18, 2021, the Department served notice of an administrative decision, based in part on decision # 64220, concluding that claimant received \$453 of regular unemployment insurance (regular UI) benefits and \$1,800 of Federal Pandemic Unemployment Compensation (FPUC) benefits to which they were not entitled and were liable to repay to the Department (decision # 83649). On December 8, 2021, decision # 83649 became final without claimant having filed a request for hearing. On March 14, 2023, claimant filed late requests for hearing on decisions # 64220 and 83649. ALJ Kangas considered claimant's requests, and on July 27, 2023, issued Orders No. 23-UI-231734 and 23-UI-231716 respectively dismissing claimant's requests for hearing on decisions # 64220 and 83649 as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by August 10, 2023. On August 15, 2023, claimant filed a late response to the appellant questionnaire and timely applications for review of Orders No. 23-UI-231734 and 23-UI-231716 with the Employment Appeals Board (EAB).

**EVIDENTIARY MATTER:** EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is claimant's response to the appellant questionnaire, marked as EAB Exhibit 1, and a copy is 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.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-231734 and 23-UI-231716. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2023-EAB-0918 and 2023-EAB-0917).

**FINDINGS OF FACT:** (1) On October 20, 2020, the Department mailed decision # 64220 to claimant's address of record on file with the Department. Decision # 64220 concluded that claimant was not available for work because for the weeks of May 10, 2020 through May 30, 2020 they were not authorized to work legally in the United States. Order No. 23-UI-231734 Exhibit 1 at 1. Decision # 64220 stated, in relevant part, "Any appeal from this decision must be filed on or before November 09, 2020 to be timely." Order No. 23-UI-231734 Exhibit 1 at 2.

(2) On November 18, 2021, the Department mailed decision # 83649 to claimant's address of record on file with the Department. Decision # 83649 concluded, based in part on decision # 64220, that claimant was overpaid \$453 of regular UI benefits and \$1,800 of FPUC benefits to which they were not entitled and was required to repay to the Department. Order No. 23-UI-231716 Exhibit 1 at 1. Decision # 83649 stated, in relevant part, "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 December 8, 2021 to be timely." Order No. 23-UI-231716 Exhibit 1 at 2.

(3) Claimant did not receive decision # 64220 or decision # 83649.

(4) In January 2023, claimant submitted to the Department a request for waiver of recovery of their regular UI and FPUC overpayments.

(5) On March 14, 2023, claimant used the Department's hearing referral web form to inquire about the status of their waiver request, and mentioned including proof of their eligibility to work in the submission. Prompted by claimant's mention of proof of eligibility to work, the representative asked if claimant wished to request a hearing on the administrative decision that concluded they were not available for work, decision # 64220. Claimant responded that they would like to "set up an UI appeal" and stated, in apparent reference to decision # 64220, "I have not received this in the mail only billing statements." Exhibit 2 at 2. The representative responded with a brief description of both decision # 64220 and decision # 83649 and advised that the Department regarded claimant's inquiry as requests for hearing on the decisions. Claimant thanked the representative and confirmed that they "never received" decisions # 64220 and 83649 "by mail," and so was unable to appeal previously. Exhibit 2 at 4.

(6) On March 14, 2023, claimant filed late requests for hearing on decisions # 64220 and 83649 via the web form.

**CONCLUSIONS AND REASONS:** Orders No. 23-UI-231734 and 23-UI-231716 are set aside. Claimant's late requests for hearing on decisions # 64220 and 83649 are allowed, and hearings on the merits of the decisions are required.

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 request a hearing on decision # 64220 was November 9, 2020. The deadline to request a hearing on decision # 83649 was December 8, 2021. Because claimant did not request hearings on the two administrative decisions until March 14, 2023, claimant's requests for hearing were late.

Claimant established good cause to extend the deadline to file a request for hearing on both decision # 64220 and decision # 83649. The record shows claimant did not receive either administrative decision. Exhibit 2 at 4. In their appellant questionnaire response, claimant explained that for some time they had been experiencing difficulties receiving mail at their address due to a lawsuit involving their neighbor and the U.S. Postal Service. EAB Exhibit 1 at 2. Claimant specifically attributed these mail problems to not receiving "the letter that asked me to show proof of being able to claim benefits," which may have either been a reference to decision # 64220 itself, or Department inquiries for proof of claimant's work eligibility that went unheeded and eventually led it to issue decision # 64220. EAB Exhibit 1 at 2. Regardless, the evidence is sufficient to conclude that claimant did not receive either decision # 64220 or decision # 83649, more likely than not because of mail difficulties that were beyond claimant's reasonable control.

This factor beyond claimant's control remained ongoing until March 14, 2023, when claimant requested a hearing on decisions # 64220 and 83649 via the web form conversation with the Department representative. Although claimant submitted to the Department a request for waiver of recovery of their regular UI and FPUC overpayments in January 2023, claimant was not made aware of decisions # 64220 and 83649 or their right to appeal them until the web form conversation with the representative. In claimant's appellant questionnaire response, they explained that they submitted their overpayment waiver request "but never heard back and someone also called me to set up a payment plan, which I did, but was never told why I was even receiving these unemployment bills." EAB Exhibit 2 at 2. Given that claimant was never told why they were receiving the overpayment bills, the receipt of the bills would not have caused the factor preventing a timely appeal to cease to exist because the bills did not make claimant aware of decisions # 64220 and 83649 and claimant's rights to appeal those decisions.

Thus, a factor beyond claimant's control, their non-receipt of the administrative decisions, prevented claimant from timely requesting a hearing on decisions # 64220 and 83649. This factor ceased to exist on March 14, 2023, the same day claimant filed their late requests for hearing on the two decisions. Accordingly, claimant established good cause to file their requests for hearing late and did so within a reasonable time. Claimant's late requests for hearing on decisions # 64220 and 83649 are allowed and a hearing on the merits of those administrative decisions is required.

**DECISION:** Orders No. 23-UI-231734 and 23-UI-231716 are set aside, and these matters remanded for further proceedings consistent with this order.

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

**DATE of Service:** September 29, 2023

**NOTE:** The failure of any party to appear at the hearings on remand will not reinstate Orders No. 23-UI-231734 or 23-UI-231716 or return these matters to EAB. Only a timely application for review of each subsequent order will cause either 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.

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