

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1087

Affirmed
Overpayment Waiver Denied

PROCEDURAL HISTORY: On August 11, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision denying claimant’s request for a waiver of an overpayment of Pandemic Emergency Unemployment Compensation (PEUC) and Federal Pandemic Unemployment Compensation (FPUC) benefits that the Department had assessed on November 9, 2021 (decision # 164855).¹ Claimant filed a timely request for hearing. On September 12, 2023, ALJ Lucas conducted a hearing, and on September 14, 2023, issued Order No. 23-UI-235929, affirming decision # 164855. On September 29, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant’s argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant’s reasonable control prevented her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant’s argument to the extent it was based on the record.

In her written argument, claimant raised three concerns in regard to the question of whether a waiver of her overpayments should be granted: first, that she “never received [the] notification dated 11-9-21;” next, that she “never received income... such as Employer stated;” and finally that “claimant’s income is at least 90% of total household income, and has no means to repay.” Claimant’s Written Argument at 2.

Claimant’s first point appears to refer to her contention that she did not receive the underlying overpayment decision (decision # 94055) that the Department mailed to her on November 9, 2021. The record shows that the matter of claimant’s late request for hearing on decision # 94055 was already adjudicated. On May 31, 2023, Order No. 23-UI-229142 was issued, dismissing claimant’s request for

¹ The record shows that while claimant was actually assessed an overpayment of \$1,963 in PEUC benefits, as correctly stated in decision # 164855, the underlying administrative decision which assessed that overpayment incorrectly described that sum as being for an overpayment of *regular* unemployment insurance (regular UI) benefits, apparently due to a scrivener’s error. See Exhibit 1 at 1; Transcript at 16.

hearing on decision # 94055 and leaving decision # 94055 undisturbed. Claimant filed an application for review of that order, and on August 24, 2023, EAB issued EAB Decision 2023-EAB-0768, affirming Order No. 23-UI-229142. EAB's records do not indicate that claimant filed either a request for reconsideration of that decision with EAB, or a petition for judicial review with the Oregon Court of Appeals. Therefore, to the extent that claimant is attempting to show that her late request for hearing on decision # 94055 should be allowed, that matter has already been settled and is now final as a matter of law, and EAB lacks jurisdiction to address that matter again in this decision.

Claimant's next point—disputing the earnings figures which the employer reported to the Department, and which were used to determine that claimant had been overpaid benefits—is similarly misplaced. Had claimant either timely filed a request for hearing on the overpayment decision, or shown that her late request for hearing on that decision should be allowed, she would have been able to present that evidence at a hearing on the merits of the overpayment decision. Because claimant's request for hearing on the overpayment decision was dismissed as late without good cause, however, the merits of the overpayment decision were not addressed and as noted above, the conclusions in that decision are now final as a matter of law. As such, EAB's scope of review in this matter is limited to the question of whether claimant's request for waiver of the overpayments assessed in decision # 94055 should be granted, rather than whether the overpayment itself was properly assessed.

Claimant's final point references her income and expenses, suggesting that she meets the threshold requirements to show that requiring repayment of the overpayments would be against equity and good conscience. As explained in the order under review,

The CARES Act authorizes the Department to waive recovery of an overpayment of PEUC benefits only if both of the following two conditions are met: (1) payment of the benefits for the period at issue occurred without fault on the part of the individual, and (2) such repayment would be contrary to equity and good conscience.

Order No. 23-UI-235929 at 7. As further explained in the order under review, the record shows that claimant was at least partially at fault for the overpayments. Order No. 23-UI-235929 at 8. Regardless of whether claimant's financial circumstances meet the "equity and good conscience" requirements, the overpayment did not occur without fault on the part of claimant. Because *both* of these conditions must be met in order to allow waiver of the overpayments, and claimant has, at best, met only one, claimant is not eligible for waiver of the overpayments.

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the order under review is **adopted**.

DECISION: Order No. 23-UI-235929 is affirmed.

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.

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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

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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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