

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1098

Late Applications for Review Allowed
Affirmed
Late Request for Hearing on March 14, 2023, PUA Determination Allowed
Ineligible for PUA Benefits
Overpayment, No Penalties

PROCEDURAL HISTORY: On March 14, 2023, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was ineligible for PUA benefits effective September 13, 2020. On March 15, 2023, the Department served notice of an administrative decision based in part on the March 14, 2023, PUA determination, concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing an overpayment of \$10,045 in PUA benefits and \$10,200 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay, and a \$3,036.75 monetary penalty. On April 3, 2023, the March 14, 2023, PUA determination became final without claimant having filed a request for hearing.

On April 4, 2023, claimant filed a late request for hearing on the March 14, 2023, PUA determination and a timely request for hearing on the March 15, 2023, overpayment decision. On May 11 and August 29, 2023, ALJ Kaneshiro conducted hearings on both requests, and on September 8, 2023, issued Order No. 23-UI-235461, allowing claimant's late request for hearing on the March 14, 2023, PUA determination and affirming the March 14, 2023, PUA determination. On September 11, 2023, ALJ Kaneshiro issued Order No. 23-UI-235550, modifying the March 15, 2023, overpayment decision by concluding that claimant was overpaid \$10,045 of PUA benefits and \$10,200 in FPUC benefits that he must repay, but that claimant did not make a willful misrepresentation or fail to report a material fact to obtain benefits and was not subject to a monetary penalty.

On September 28, 2023, Order No. 23-UI-235461 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On October 2, 2023, Order No. 23-UI-235550 became final without claimant having filed an application for review with EAB. On October 5, 2023, claimant filed late applications for review of Orders No. 23-UI-235461 and 23-UI-235550 with EAB.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-235461 and 23-UI-235550. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2023-EAB-1098 and 2023-EAB-1221).

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 provided with claimant’s late applications for review, and 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) Order No. 23-UI-235461, mailed to claimant on September 8, 2023, 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-235461 at 7. Order No. 23-UI-235461 also stated on its Certificate of Mailing, “Any appeal from this Order must be filed on or before September 28, 2023, to be timely.”

(2) Order No. 23-UI-235550, mailed to claimant on September 11, 2023, 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-235550 at 11. Order No. 23-UI-235550 also stated on its Certificate of Mailing, “Any appeal from this Order must be filed on or before October 2, 2023, to be timely.”

(3) Due to illness, claimant was “bedridden for most of September [2023], unable to drive to pick up mail or go somewhere that had internet access.” EAB Exhibit 1 at 1. He was also “unable to read and understand” Orders No. 23-UI-235461 and 23-UI-235550 because of his illness. EAB Exhibit 1 at 1. Claimant filed applications for review of Orders No. 23-UI-235461 and 23-UI-235550 with EAB on October 5, 2023.

CONCLUSIONS AND REASONS: Claimant’s late applications for review are allowed. Claimant’s late request for hearing on the March 14, 2023, PUA determination is allowed. Claimant is ineligible for PUA benefits. Claimant was overpaid \$10,045 of PUA benefits and \$10,200 of FPUC benefits that he is required to repay but did not make a willful misrepresentation or fail to report a material fact to obtain benefits and is not subject to a monetary penalty.

Late applications 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 application for review of Order No. 23-UI-235461 was due September 28, 2023. The application for review of Order No. 23-UI-235550 was due October 2, 2023. Because claimant did not file his applications for review of Orders No. 23-UI-235461 and 23-UI-235550 until October 5, 2023, the applications for review were late.

Claimant's written statement suggested that he was unable to retrieve the orders under review from his mailbox due to illness during the timely filing period. EAB Exhibit 1 at 1. Claimant wrote that his condition improved "within 5 days" of when he filed his applications for review, and that the circumstances that prevented timely filing ceased on "10/02/23." EAB Exhibit 1 at 1. It can be inferred from these statements that claimant was first able to retrieve the orders under review and file an application for review beginning the following day, October 3, 2023. Therefore, claimant's medical condition was a factor or circumstance beyond his reasonable control that prevented timely filing of his applications for review until October 3, 2023. As claimant filed his late applications for review on October 5, 2023, he did so within a "reasonable time" after the factor or circumstance that prevented timely filing ceased. Accordingly, claimant has shown good cause to extend the deadline for timely filing, and the late applications for review of Orders No. 23-UI-235461 and 23-UI-235550 are allowed.

Review of Orders No. 23-UI-235461 and 23-UI-235550. EAB reviewed the entire consolidated hearing record. On *de novo* review and pursuant to ORS 657.275(2), the orders under review are **adopted**.

DECISION: Claimant's late applications for review are allowed. Orders No. 23-UI-235461 and 23-UI-235550 are affirmed.

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

DATE of Service: November 14, 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.

NOTE: The Department may defer recovery or completely waive the overpaid amount if certain standards are met. To make a request for Waiver of Overpayment Recovery, call 503-947-1995 or email OED_Overpayment_unit@employ.oregon.gov. You must submit waiver applications that correspond to the program for which you were overpaid benefits. **If you were overpaid benefits under both state and federal benefits programs, you will need to file two separate waiver applications.** To access a State UI Overpayment Waiver application go online to <https://unemployment.oregon.gov/waivers> and click the link for "State UI Overpayment Waiver". To access a Federal Program Overpayment Waiver application go online to <https://unemployment.oregon.gov/waivers> and click the link for "Federal Program Overpayment Waiver".

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 ito.

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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