

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1239-R

Requests for Reconsideration Allowed
EAB Decisions 2023-EAB-1238-R and 2023-EAB-1239-R Adhered to On Reconsideration

PROCEDURAL HISTORY: On November 16, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and therefore was disqualified from receiving unemployment insurance benefits effective December 26, 2021 (decision # 82915). On December 6, 2022, decision # 82915 became final without claimant having filed a request for hearing. On March 16, 2023, the Department served notice of an administrative decision, based in part on decision # 82915, concluding that claimant had received benefits to which she was not entitled, and assessing an overpayment of \$5,759 in regular unemployment insurance (regular UI) benefits that claimant was required to pay to the Department (decision # 154937). On March 30, 2023, claimant filed a late request for hearing on decision # 82915 and a timely request for hearing on decision # 154937. On October 25, 2023, ALJ Micheletti conducted a hearing on decision # 82915, at which the employer did not appear, and also a hearing on decision # 154937. On October 26, 2023, ALJ Micheletti issued Order No. 23-UI-239633, denying claimant's late request for hearing on decision # 82915 and leaving that decision undisturbed; and Order No. 23-UI-239677, affirming decision # 154937 on the merits. On November 6, 2023, claimant filed applications for review of Orders No. 23-UI-239633 and 23-UI-239677 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-239633 and 23-UI-239677, and on December 20, 2023, issued EAB Decision 2023-EAB-1238, affirming Order No. 23-UI-239633; and 2023-EAB-1239, modifying Order No. 23-UI-239677 by concluding that claimant was only liable for an overpayment of \$1,329, rather than \$5,759, that she was required to repay to the Department. On December 27, 2023, claimant filed requests for reconsideration of EAB Decisions 2023-EAB-1238 and 2023-EAB-1239. This decision is issued pursuant to EAB's authority under ORS 657.290(3).

CONCLUSIONS AND REASONS: Claimant's requests for reconsideration are allowed. On reconsideration, EAB Decisions 2023-EAB-1238 and 2023-EAB-1239 are adhered to, as clarified herein.

ORS 657.290(3) authorizes EAB 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.” “Any party may request reconsideration to correct an error of material fact or law, or to explain any unexplained inconsistency with Employment Department rule, or officially stated Employment Department position, or prior Employment Department practice.” OAR 471-041-0145(1) (May 13, 2019).

Claimant filed requests for reconsideration consistent with the requirements set forth in OAR 471-041-0145. The requests for reconsideration are, therefore, allowed. However, claimant did not set forth any information in her requests for reconsideration which correct an error of fact or law in EAB Decisions 2023-EAB-1238 or 2023-EAB-1239, regarding either her late requests for hearing on decision # 82915 or the overpayment of \$1,329 that she was required to repay to the Department.¹ Therefore, EAB Decisions 2023-EAB-1238 and 2023-EAB-1239 are adhered to on reconsideration.

Claimant should note that while EAB Decision 2023-EAB-1239 found that she remained liable for some overpayment, that decision reduced the assessed overpayment amount from \$5,759 to \$1,329. Claimant should also note that the Department may waive recovery of overpayments in certain circumstances. Claimant may apply for a waiver by following information in the note below.

DECISION: Claimant’s requests for reconsideration are allowed. On reconsideration, EAB Decisions 2023-EAB-1238 and 2023-EAB-1239 are adhered to as clarified herein.

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

DATE of Service: January 31, 2024

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**

¹ In her requests for reconsideration, claimant suggested that she was “only collecting unemployment” in relation to her work for an employer other than the employer named in this decision, and that the disqualification under decision # 82915 was therefore error. Claimant’s Requests for Reconsideration at 4. Claimant is advised, however, that eligibility for benefits can be based on work performed for more than one employer, as is the case here. Therefore, claimant’s statement that she “did not collect benefits” from the employer named in this decision is not accurate, and that statement does not correct an error of fact or law. Claimant’s Requests for Reconsideration at 5.

<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 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 الاستئناف 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.