

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-1313**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On August 10, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant received benefits to which they were not entitled, and assessing an overpayment of \$4,602 in regular unemployment insurance (regular UI) benefits, \$177 in Pandemic Emergency Unemployment Compensation (PEUC) benefits, and \$8,400 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was liable to repay to the Department (decision # 134121). On August 30, 2022, decision # 134121 became final without claimant having filed a request for hearing. On February 3, 2023, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on June 29, 2023 issued Order No. 23-UI-229175, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by July 13, 2023. On July 19, 2023, claimant filed a late response to the appellant questionnaire and a timely application for review Order No. 23-UI-229175 with the Employment Appeals Board (EAB). On December 5, 2023, ALJ Kangas mailed a letter to claimant stating that because the appellant questionnaire response was late, it would not be considered, and another order would not be issued regarding the matter. The matter comes before EAB based upon claimant's July 19, 2023 application for review of Order No. 23-UI-229175.

**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, 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) On August 10, 2022, decision # 134121 was mailed to claimant's address of record on file with the Department. It stated, "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 August 30, 2022 to be timely." Exhibit 1 at 3.

(2) On February 3, 2023, claimant filed their request for hearing on decision # 134121, stating, “I need to appeal a decision and address my newest problem I didn’t know about, a \$12,200 overpay during the pandemic.” Exhibit 2 at 2.

**CONCLUSIONS AND REASONS:** Order No. 23-UI-229175 is set aside and the matter remanded for a hearing to determine whether claimant’s late request for hearing should be allowed and, if so, the merits of decision # 134121.

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 file a timely request for hearing on decision # 134121 was August 30, 2022. Claimant filed their request for hearing on February 3, 2023, and the request therefore was late. Claimant’s request for hearing and appellant questionnaire response suggest that claimant may have been prevented from timely filing the request due to factors outside of their reasonable control or an excusable mistake. Further development of the record is therefore needed.

Claimant wrote in their questionnaire response that they did not timely file their request for hearing because, “I was unaware there was an error on my UI appeal till April.” EAB Exhibit 1 at 1. Further, claimant wrote in the response, “...I was certain I had no issues due to initial payout of UI. Till this year I got notice to pay [the total overpayment amount].” EAB Exhibit 1 at 1. Claimant also stated in their request for hearing that they “didn’t know about” the overpayment assessed in decision # 134121. Exhibit 2 at 2. Claimant’s statements, both in the questionnaire response and the late request for hearing, suggest that claimant may not have received decision # 134121 when it was mailed, and learned about the overpayment after the timely filing period expired. Further development of the record is therefore needed to determine if claimant had good cause to file the late request for hearing.

On remand, inquiry should be made into whether and when claimant received decision # 134121, or otherwise learned of the decision and their appeal rights; what could have delayed receipt of decision # 134121 if it was delayed or not received; and if any other factors prevented timely filing of the request for hearing. This inquiry should include what “error” claimant learned of in April, and in which year, and how such an error prevented timely filing. If good cause is found to extend the deadline for timely filing, further inquiry should be made as to when the factor or factors that prevented timely filing ceased, and whether claimant’s request for hearing was filed within a seven-day “reasonable time” thereafter.

Because further development of the record is required, Order No. 23-UI-229175 is set aside and the matter remanded for a hearing to determine whether claimant’s late request for hearing should be allowed and, if so, the merits of decision # 134121.

**DECISION:** Order No. 23-UI-229175 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service: December 8, 2023**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-229175 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this 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 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.

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