

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-1338**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On April 12, 2023, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was ineligible to receive PUA benefits effective December 6, 2020. On April 26, 2023, the Department served notice of an administrative decision, based in part on the April 12, 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 \$7,995 in PUA benefits and \$10,800 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay to the Department and a \$2,819.25 monetary penalty. On May 2, 2023 and May 16, 2023, the April 12, 2023 PUA determination and April 26, 2023 overpayment determination became final, respectively, without claimant having filed a request for hearing. On July 1, 2023, claimant filed late requests for hearing on the April 12, 2023 PUA determination and April 26, 2023 overpayment determination.

ALJ Kangas considered claimant's requests, and on November 28, 2023 issued Orders No. 23-UI-242006 and 23-UI-242005, dismissing the requests for hearing on the April 12, 2023 PUA determination and April 26, 2023 overpayment determination, respectively, as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by December 12, 2023. On December 13, 2023, claimant filed a late response to the appellant questionnaire and timely applications for review of Orders No. 23-UI-242006 and 23-UI-242005 with the Employment Appeals Board (EAB). On December 20, 2023, ALJ Kangas mailed letters to claimant stating that because the appellant questionnaire response was late, it would not be considered and new orders would not be issued in the matters. These matters come before EAB based upon claimant's December 13, 2023 applications for review of Orders No. 23-UI-242006 and 23-UI-242005.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-242006 and 23-UI-242005. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2023-EAB-1337 and 2023-EAB-1338).

**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 April 12, 2023, the Department mailed the April 12, 2023 PUA determination to claimant's mailing address of record. The April 12, 2023 PUA determination stated, "You have the right to appeal this decision if you do not believe it is correct. Your request for appeal must be received by May 2, 2023." Order No. 23-UI-242006, Exhibit 1 at 2.

(2) On April 26, 2023, the Department mailed the April 26, 2023 overpayment determination to claimant's mailing address of record. The April 26, 2023 overpayment determination stated, "If you do not agree with this decision, you may file an appeal. You must file your appeal from this decision on or before May 16, 2023 to be timely." Order No. 23-UI-242005, Exhibit 2 at 4.

(3) On July 1, 2023, claimant filed requests for hearing on the April 12, 2023 PUA determination and April 26, 2023 overpayment determination.

**CONCLUSIONS AND REASONS:** Orders No. 23-UI-242006 and 23-UI-242005 are set aside and the matters remanded for hearings to determine whether claimant had good cause to file their requests for hearing late and, if so, the merits of the April 12, 2023 PUA determination and April 26, 2023 overpayment determination.

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 requests for hearing on the April 12, 2023 PUA determination and April 26, 2023 overpayment determination were due by May 2, 2023 and May 16, 2023 respectively. Because claimant filed their requests for hearing on July 1, 2023, the requests were late.

In their appellant questionnaire response, claimant wrote that their requests for hearing were filed late because "I didn't know I needed to appeal this. I had no idea about anything till after appeal date." EAB Exhibit 1 at 4. Claimant also wrote, "I never received a notice of administrative decision. I received a bill so I had no idea." EAB Exhibit 1 at 10. Claimant also wrote, "I'm. . . not sure why I didn't receive my mail." EAB Exhibit 1 at 10. It is unclear from claimant's response whether claimant received the April 12, 2023 PUA determination and April 26, 2023 overpayment determination, or received one or both of them but did not understand their right to appeal. Accordingly, further development of the record is warranted to determine whether factors beyond claimant's reasonable control or an excusable mistake prevented timely filing of the requests for hearing.

On remand, inquiry should be made into whether and when claimant received the April 12, 2023 PUA determination and April 26, 2023 overpayment determination, or otherwise learned about these decisions and their appeal rights therefrom, as well as whether any other factors which prevented them from timely filing their requests for hearing.

If good cause is shown to extend the deadline for timely filing, further inquiry should be made into when the circumstances that prevented timely filing ceased, and whether claimant's requests for hearing were filed within a "reasonable time" thereafter. As claimant wrote in their questionnaire response that they were prompted to file the late requests for hearing when they did because they "received a bill for overpayment," inquiry should be made into whether claimant was referring to the April 26, 2023 overpayment determination or an actual bill, when claimant received that document, and what actions claimant took in response. EAB Exhibit 1 at 4.

Because further development of the record is needed, Orders No. 23-UI-242006 and 23-UI-242005 are set aside and the matters remanded for hearings to determine whether claimant had good cause to file their requests for hearing late and, if so, the merits of the April 12, 2023 PUA determination and April 26, 2023 overpayment determination.

**DECISION:** Orders No. 23-UI-242006 and 23-UI-242005 are set aside, and these matters remanded for further proceedings consistent with this order.

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

**DATE of Service: January 19, 2024**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Orders No. 23-UI-242006 and 23-UI-242005 or return these matters to EAB. Only a timely application for review of the subsequent orders will cause these matters to return to EAB.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveymzmo.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 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.

**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](http://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.