

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1359

Order No. 23-UI-242345 ~ Reversed ~ Late Request for Hearing Allowed ~ Merits Hearing Required
Order No. 23-UI-242348 ~ Reversed & Remanded

PROCEDURAL HISTORY: On June 10, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving benefits effective November 8, 2020 (decision # 114903). On June 24, 2021, the Department served notice of an administrative decision based in part on decision # 114903, concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing an overpayment of \$1,208 in regular unemployment insurance (regular UI), \$900 in Federal Pandemic Unemployment Compensation (FPUC), and \$300 in Lost Wages Assistance (LWA) benefits that claimant was required to repay, a \$421.60 monetary penalty, and an 18-week penalty disqualification from future benefits.¹ On June 30, 2023, decision # 114903 became final without claimant having filed a request for hearing. On July 1, 2021, claimant filed a late request for hearing on decision # 114903 and a timely request for hearing on the June 24, 2021, administrative decision.

On November 30, 2023, ALJ Fraser conducted hearings on both matters, and issued Order No. 23-UI-242345 dismissing claimant's request for hearing on decision # 114903 as late without good cause, and Order No. 23-UI-242348 modifying the June 24, 2021 administrative decision by concluding that claimant was overpaid \$1,208 in regular UI benefits and \$900 in combined FPUC and LWA benefits that he was liable to repay, but that he did not willfully make a misrepresentation and fail to report a material fact to obtain benefits, and was not liable for a monetary or disqualification penalty. On December 19, 2023, claimant filed applications for review of Orders No. 23-UI-242345 and 23-UI-242348 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-242345 and 23-UI-242348. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2023-EAB-1359 and 2023-EAB-1358).

¹ The June 24, 2021, administrative decision amended and replaced a similar administrative decision issued June 23, 2021. Order No. 23-UI-242348 Exhibit 1 at 6-9; Transcript at 6.

EAB reviewed the entire consolidated hearing record. On *de novo* review and pursuant to ORS 657.275(2), the portions of Order No. 23-UI-242348 that concluded claimant did not willfully make a misrepresentation or fail to report a material fact to obtain benefits and was not liable for a monetary or disqualification penalty, but that claimant was overpaid \$302 in regular UI, \$600 in FPUC, and \$300 in LWA benefits for the weeks from July 19 through August 1, 2020 (weeks 30-20 through 31-20) that claimant was liable to repay, are **adopted**. The rest of this decision addresses claimant's late request for hearing on decision # 114903, and the portion of the overpayment assessed in the June 24, 2021, administrative decision involving the weeks from November 22, 2020, through January 2, 2021 (weeks 48-20 through 53-20).

FINDINGS OF FACT: (1) On June 10, 2021, decision # 114903 was mailed to claimant's mailing address of record. Decision # 114903 stated, "You have the right to appeal this decision if you do not believe it is correct. Your request for appeal must be received no later than June 30, 2021." Order No. 23-UI-242348 Exhibit 1 at 11.

(2) On June 24, 2021, the Department issued the June 24, 2021, administrative decision concluding that claimant was overpaid benefits, based in part on the disqualification from benefits at issue in decision # 114903. Claimant received the June 24, 2021, administrative decision on or before June 28, 2021.

(3) On June 28, 2021, claimant called the Department because he did not understand the June 24, 2021, administrative decision and his appeal rights therefrom. The representative explained the overpayment decision and claimant expressed disagreement with it and the underlying causes of the overpayment, including unreported remuneration and the work separation at issue in decision # 114903. The representative did not advise claimant of decision # 114903 or his appeal rights on that decision, and only advised claimant of his appeal rights as to the June 24, 2021, administrative decision.

(4) On July 1, 2021, claimant filed a request for hearing online that expressed disagreement with the overpayment assessed in the June 24, 2021, administrative decision and the underlying work separation at issue in decision # 114903 that formed the basis of part of the overpayment. The filing was processed as a request for hearing on both administrative decisions.

CONCLUSIONS AND REASONS: Claimant's late request for hearing on decision # 114903 is allowed, and a hearing on the merits of that decision is required. Order No. 23-UI-242348 is set aside and the matter remanded for further proceedings pending the outcome of the hearing on decision # 114903.

Late request for hearing on decision # 114903. 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 request for hearing on decision # 114903 was due June 30, 2021. Because claimant filed his request for hearing on July 1, 2021, the request was late.

Order No. 23-UI-242345 concluded, “Claimant received [decision # 114903] and saw the deadline to appeal” and was not prevented from timely filing a request for hearing by circumstances beyond his reasonable control or an excusable mistake. Order No. 23-UI-242345 at 2-3. The record does not support these conclusions.

The record does not show whether claimant received decision # 114904 or was made aware of his appeal rights from that decision. Though claimant was asked about this at hearing, his replies only mentioned receiving and inquiring about the June 24, 2021, overpayment decision. Order No. 23-UI-242345 Audio Record at 17:00 to 18:42. Claimant was confused by the June 24, 2021, overpayment decision, prompting him to call the Department on June 28, 2021, for assistance. The consolidated hearing record suggests that the confusion may have stemmed from claimant having difficulty reading or comprehending correspondence from the Department, as claimant summarized, “I’m not a reader.” Order No. 23-UI-242348 Transcript at 25. The representative who spoke with claimant on June 28, 2021, noted, “Per telephone call with claimant, didn’t agree with the overpayment letter. Advised of appeal process.” Order No. 23-UI-242345 Audio Record at 11:15. It can reasonably be inferred from this note that the representative did not discuss # 114903 or claimant’s appeal rights from that decision during the call, since the note only referenced the June 24, 2021, overpayment decision. When asked why claimant did not file a request for hearing the day he called, claimant testified, “I thought I did. . . I just didn’t know what to do with the appeal. I just didn’t know how to apply[.]” Order No. 23-UI-242345 Audio Record at 18:37. The issue of whether claimant received or was specifically told of the existence of decision # 114903 and his appeal rights from that decision is therefore unsettled.

Nonetheless, it can be inferred from the record that if claimant received decision # 114903, he likely was unable to understand decision # 114903 and his appeal rights therefrom by attempting to read the decision. He therefore was reliant on the Department for assistance in this regard as evidenced by his June 28, 2021, call. The Department representative failed to notify claimant of or explain to him decision # 114903 when he called, file an appeal on his behalf when he expressed disagreement with the merits of that decision and displayed confusion over how to request a hearing, or advise claimant that the deadline to request a hearing on decision # 114903 was in two days.

It is reasonable to infer that because of the Department representative’s failure to address decision # 114903 during the call, claimant was unaware that he needed to take further action to request a hearing on decision # 114903 by June 30, 2021. This constituted an excusable mistake that prevented timely filing. This circumstance lasted until claimant filed his July 1, 2021, request for hearing on the June 24, 2021, administrative decision, which was also construed as a late request for hearing on decision # 114903. Accordingly, claimant has shown good cause to extend the deadline for timely filing, and that he filed his late request for hearing within a “reasonable time” after the circumstances that prevented timely filing ceased. Claimant’s late request for hearing on decision # 114903 therefore is allowed, and a hearing on the merits is required.

Overpayment. Order No. 23-UI-242348 concluded that claimant did not willfully make a misrepresentation or fail to report a material fact to obtain benefits, and was therefore not liable for a monetary penalty or penalty disqualification weeks. Order No. 23-UI-242348 at 5. Order No. 23-UI-242348 also concluded that claimant was overpaid \$302 in regular UI, \$600 in FPUC, and \$300 in LWA benefits for the weeks from July 19 through August 1, 2020 (weeks 30-20 through 31-20) because claimant earned remuneration in excess of his weekly benefit amount those weeks. Order No. 23-UI-

242348 at 3-4. This decision has adopted those conclusions and the findings of fact on which they were based. However, Order No. 23-UI-242348 also concluded that claimant was overpaid \$906 in regular UI and \$300 in FPUC for the weeks from November 22, 2020, through January 2, 2021 (weeks 48-20 through 53-20) based on the disqualification from benefits imposed in decision # 114903. Order No. 23-UI-242348 at 5-6. Because claimant is entitled to a hearing on the merits of decision # 114903, further development of the record is needed as to whether claimant was overpaid for weeks 48-20 through 53-20, pending the outcome of that hearing.

For these reasons, claimant's late request for hearing on decision # 114903 is allowed, Order No. 23-UI-242345 is set aside, and the matter remanded for a hearing on the merits of decision # 114903. Order No. 23-UI-242348 is also set aside, and the matter remanded for further proceedings to determine, pending the outcome of the hearing on decision # 114903, whether claimant was overpaid benefits for weeks 48-20 through 53-20.

DECISION: Orders No. 23-UI-242345 and 23-UI-242348 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 24, 2024

NOTE: The failure of any party to appear at the hearings on remand will not reinstate Orders No. 23-UI-242345 and 23-UI-242348 or return these matters 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 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

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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.

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