

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0172

Order No. 24-UI-246488 Affirmed – Late Request for Hearing Dismissed
Order No. 24-UI-246499 Affirmed – Overpayment, No Penalties

PROCEDURAL HISTORY: On August 12, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving unemployment insurance benefits effective April 18, 2021 (decision # 132305). On September 1, 2021, decision # 132305 became final without claimant having filed a request for hearing. On April 14, 2022, the Department served notice of an administrative decision concluding that claimant was paid benefits to which she was not entitled and assessing an overpayment of \$5,384 in regular benefits (regular UI) and \$2,400 in Federal Pandemic Unemployment Compensation benefits (FPUC) that claimant was liable to repay the Department (decision # 105638). On April 19, 2022, claimant filed a late request for hearing on decision # 132305 and a timely request for hearing on decision # 105638.

On November 7, 2023, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for November 21, 2023, to determine whether claimant's late request for hearing on decision # 132305 should be allowed and, if so, the merits of that decision. On November 21, 2023, claimant failed to appear for the hearing. On November 28, 2023, ALJ Lucas issued Order No. 23-UI-242032, dismissing the hearing request due to claimant's failure to appear, and leaving decision # 132305 undisturbed. On December 7, 2023, claimant filed a timely request to reopen the November 21, 2023, hearing.

On January 4, 2024, ALJ Lucas conducted a hearing on claimant's request to reopen the November 21, 2023, hearing at which the employer did not appear and the Department submitted an Attestation in lieu of attending the hearing. Also on January 4, 2024, ALJ Lucas conducted a separate hearing on the merits of decision # 105638. On January 24, 2024, ALJ Lucas conducted a hearing to address claimant's late request for hearing on decision # 132305, and, if allowed, the merits of that decision. On January 25, 2024, ALJ Lucas issued Order No. 24-UI-246488, allowing claimant's request to reopen the November 21, 2023, hearing and canceling Order No. 23-UI-242032, but concluding that claimant's request for hearing on decision # 132305 was late without good cause and dismissing the hearing request on decision # 132305, leaving that decision undisturbed. Also on January 25, 2024, ALJ Lucas issued

Order No. 24-UI-246499, affirming decision # 105638 on the merits. On February 12, 2024, claimant filed applications for review of Orders No. 24-UI-246488 and 24-UI-246499 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 24-UI-246488 and 24-UI-246499. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2024-EAB-0172 and 2024-EAB-0173).

WRITTEN ARGUMENT: For purposes of review of Order No. 24-UI-246488, EAB did not consider claimant's written argument when reaching this decision because she did not include a statement declaring that she provided a copy of her argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). Claimant's argument also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. For purposes of review of Order No. 24-UI-246499, EAB considered claimant's argument to the extent it was based on the record.

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: Orders No. 24-UI-246488 and 24-UI-246499 are affirmed.

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

DATE of Service: March 15, 2024

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".

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.

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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 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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