

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0269

Reversed
Late Requests for Hearing Allowed
Merits Hearings Required

PROCEDURAL HISTORY: On September 7, 2023, 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 \$176 in regular unemployment insurance (regular UI) benefits that claimant was liable to repay through deduction from future benefits (decision # 111401). On September 14, 2023, the Department served notice of an administrative decision concluding that claimant received benefits to which they were not entitled, and assessing an overpayment of \$560 in regular UI and \$300 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was liable to repay (decision # 111152). On September 27, 2023 and October 4, 2023, decisions # 111401 and 111152, respectively, became final without claimant having filed requests for hearing.

On February 8, 2024, claimant filed late requests for hearing on decisions # 111401 and 111152. ALJ Kangas considered claimant's requests, and on February 15, 2024 issued Orders No. 24-UI-248160 and 24-UI-248158, dismissing the requests as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by February 29, 2024. On March 1, 2024, claimant filed a late response to the appellant questionnaire and timely applications for review of Orders No. 24-UI-248160 and 24-UI-248158 with the Employment Appeals Board (EAB). On March 14, 2024, ALJ Kangas mailed a letter to claimant stating that because the appellant questionnaire response was late, it would not be considered and additional orders would not be issued in these matters.

These matters come before EAB based upon claimant's applications for review of Orders No. 24-UI-248160 and 24-UI-248158. Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 24-UI-248160 and 24-UI-248158. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2024-EAB-0269 and 2024-EAB-0268).

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 appellant questionnaire response, marked as EAB Exhibit 1, and Department documents relating to the assessment

of overpayments for the weeks of March 14 through 27, 2021 (weeks 11-21 and 12-21), marked as EAB Exhibit 2. In admitting EAB Exhibit 2, EAB has taken notice of information contained in Employment Department records in accordance with OAR 471-041-0090(1)(c). Copies of the exhibits are provided to the parties with this decision. Any party that objects to our admitting EAB Exhibits 1 and 2 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 exhibits will remain in the record.

FINDINGS OF FACT: (1) Decision # 111401, mailed to claimant's address of record on file with the Department on September 7, 2023, 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 September 27, 2023." Order No. 24-UI-248160, Exhibit 1 at 2. Decision # 111401 assessed an overpayment of \$176 for week 11-21. Order No. 24-UI-248160, Exhibit 1 at 4. Claimant did not receive decision # 111401 in the mail.

(2) Decision # 111152, mailed to claimant's address of record on file with the Department on September 14, 2023, stated, "[Y]ou have the right to appeal this decision. Any appeal from this decision must be filed on or before October 4, 2023 to be timely." Order No. 24-UI-248158, Exhibit 1 at 2. Decision # 111152 assessed a combined overpayment of \$860 for week 12-21. Order No. 24-UI-248158, Exhibit 1 at 3. Claimant did not receive decision # 111152 in the mail.

(3) On September 9, 2022, the Department issued an administrative decision to claimant which assessed a combined overpayment of \$120 for weeks 11-21 and 12-21 (decision # 124927). EAB Exhibit 2 at 3. Claimant filed a timely request for hearing on decision # 124927 and a hearing was scheduled for September 14, 2023.

(4) On August 31, 2023, the Department issued decision # 85503, canceling decision # 124927 without further explanation. EAB Exhibit 2 at 4.

(5) On September 6, 2023, the Department issued Order No. 2023-UI-07879, dismissing claimant's request for hearing on decision # 124927 because "[t]he Department cancelled the overpayment decision appealed by claimant on August 30, 2023, thus, no overpayment exist[s]." EAB Exhibit 2 at 6.

(6) On September 8, 2023, claimant spoke on the telephone with a representative of the Office of Administrative Hearings (OAH) regarding a pending appeal unrelated to decision # 124927. During the call, claimant mentioned having received Order No. 2023-UI-07879. Notes of this call show no indication that claimant either mentioned receiving decision # 111401 or inquired about any overpayment during the call. *See* EAB Exhibit 2 at 7.

(7) On September 27, 2023, claimant telephoned the Department to inquire whether a hearing would be held as scheduled on the unrelated matter, and was told that the hearing would be cancelled. The Department's notes do not mention discussion of decisions # 111401 and 111152 or any overpayment during the call.¹

¹ EAB has taken notice of these facts which are contained in Employment Department records. OAR 471-041-0090(1). Any party that objects to our taking notice of this information 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 noticed facts will remain in the record.

(8) On December 20, 2023, claimant telephoned the Department to inquire about overpayments. The representative explained that decisions # 111401 and 111152 had been issued, the reasons that they assessed overpayments, and that claimant had the right to request hearings on the decisions. Claimant “specifically asked [the representative] if it was of any concern that [claimant] was filing the appeal late.” EAB Exhibit 1 at 2. The representative replied, “No, they don’t care that it’s late.” EAB Exhibit 1 at 2. At claimant’s request, the representative mailed copies of decisions # 111401 and 111152 to claimant the following day. *See* EAB Exhibit 1 at 5. Claimant received these copies in the mail.

(9) On February 8, 2024, claimant filed late requests for hearing on decisions # 111401 and 111152. Claimant did not file the requests sooner because claimant gave priority to other matters, and because claimant misunderstood from the December 20, 2023 telephone conversation that filing the late requests was not time-sensitive.

CONCLUSIONS AND REASONS: Claimant’s late requests for hearing are allowed and hearings on the merits of decisions # 111401 and 111152 are required.

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 decisions # 111401 and 111152 were due by September 27, 2023 and October 4, 2023, respectively. Claimant filed their requests for hearing on February 8, 2024, and the requests therefore were late. However, the record demonstrates good cause to extend the deadline for timely filing to February 8, 2024.

Claimant stated in their appellant questionnaire response that they “have no record of ever receiving the original decision[s].” EAB Exhibit 1 at 1. It is reasonable to infer from this statement and other evidence that claimant did not receive decisions # 111401 and 111152 in the mail, which was a circumstance beyond claimant’s reasonable control that prevented timely filing of the requests for hearing. This inference is supported by the fact that claimant previously appealed an administrative decision that concluded claimant was overpaid benefits for weeks 11-21 and 12-21, because that appeal demonstrated disagreement with the conclusion that they were overpaid for those weeks. As claimant expressed that disagreement by filing a timely request for hearing on the previous overpayment decision, it is likely claimant would also have requested hearings on decisions # 111401 and 111152, which assessed overpayments for the same weeks, had claimant received those decisions.

The fact that claimant did not discuss the existence of decisions # 111401 and 111152 or the overpayments they assessed during the September 8, 2023 and September 27, 2023 conversations with OAH and the Department, and that claimant requested copies of the decisions on December 20, 2023, further support that claimant did not receive the copies of decisions # 111401 and 111152 originally

mailed to them. Therefore, more likely than not, claimant was delayed in filing their requests for hearing by not receiving decisions # 111401 and 111152 in the mail, which was a factor beyond claimant's reasonable control. This factor ceased on approximately December 23, 2023, when claimant received copies of the administrative decisions at their request.

It is unclear from the record what motivated claimant to telephone the Department on December 20, 2023 to inquire about the overpayments, since claimant did not learn about decisions # 111401 and 111152 from having received them in the mail. If claimant learned of the overpayment through collection attempts, claimant may have been confused or unsure about whether the overpayments actually existed or whether their assessment could be appealed. Such confusion would be understandable because claimant received Order No. 2023-UI-07879, containing a finding of fact that no overpayment regarding weeks 11-21 and 12-21 existed, *after* the overpayment for week 11-21 was reassessed on September 7, 2023. This confusion might also have extended to whether claimant had to again request a hearing to contest that they had been overpaid for weeks 11-21 and 12-21, given that claimant's previous appeal of the overpayment for weeks 11-21 and 12-21 was dismissed based on the Department's representation that no overpayment existed. To the extent such confusion also delayed filing of the requests for hearing on decisions # 111401 and 111152, this delay was the result of an excusable mistake because it was caused by conflicting and confusing information provided by the Department regarding the overpayments. This factor did not cease until claimant received "clarification" regarding the overpayments on December 20, 2023. EAB Exhibit 1 at 2.

Further, while decisions # 111401 and 111152 explain the right to file a request for hearing by the deadline indicated, they do not explain that a *late* request for hearing can be filed after the deadline has passed, or the requirements for doing so. *See* Order No. 24-UI-248160, Exhibit 1 at 2; Order No. 24-UI-248158, Exhibit 1 at 2. Claimant stated in their appellant questionnaire response that during the December 20, 2023 telephone call, after being informed of the overpayments assessed in decisions # 111401 and 111152, claimant asked the representative about their right to file late requests for hearing on those decisions. EAB Exhibit 1 at 2. Claimant further stated that the representative "very directly replied, 'No, they don't care that it's late.'" EAB Exhibit 1 at 2. Claimant's questionnaire response then explained, "I didn't file my appeal because I was told on that day that it simply didn't matter." EAB Exhibit 1 at 2. It can reasonably be inferred from these statements and circumstances that claimant did not promptly file their late requests for hearing after having received copies of decisions # 111401, and 111152 and having the decisions explained to them, because claimant did not understand that such requests had to be filed within a "reasonable time" after the factors that had delayed filing ceased.

Therefore, even though the factors that had previously delayed filing of the requests for hearing had ceased by late December 2023, claimant's misunderstanding of the time-sensitive nature of filing late requests for hearing was an excusable mistake that continued to delay their filing of the requests. Claimant's mistake is excusable because it was due to misinformation provided by the Department regarding the requirements of filing a late request for hearing. This continued to delay filing until claimant filed the late requests for hearing on February 8, 2024. Accordingly, claimant has shown good cause to extend the deadline for timely filing to February 8, 2024, and the requests were filed that day, which was within a reasonable time.

For these reasons, claimant's late requests for hearing on decisions # 111401 and 111152 are allowed, and the matters are remanded for hearings on the merits of those decisions.

DECISION: Orders No. 24-UI-248160 and 24-UI-248158 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: April 5, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 24-UI-248160 and 24-UI-248158 or return these matters to EAB. Only timely applications for review of the subsequent orders will cause these matters 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 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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