

**EMPLOYMENT APPEALS BOARD DECISION**  
**2024-EAB-0331**

*Order No. 24-UI-250008 Reversed and Remanded*

*Order No. 24-UI-250011 Reversed*  
*Late Request for Hearing Allowed*  
*Merits Hearing Required*

**PROCEDURAL HISTORY:** On February 8, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and disqualified from receiving benefits effective August 31, 2020<sup>1</sup> (decision # 83434). On March 1, 2021, decision # 83434 became final without claimant having filed a request for hearing. On December 20, 2021, the Department served notice of an administrative decision based in part on decision # 83434, concluding that claimant received \$900 in Lost Wages Assistance (LWA) benefits to which he was not entitled and must repay (decision # 0565843). On January 10, 2022, decision # 0565843 became final without claimant having filed a request for hearing.

On May 13, 2022, claimant submitted a filing that was construed, in part, as late requests for hearing on decisions # 83434 and 0565843. On March 5, 2024, ALJ Frank conducted hearings on both administrative decisions, and on March 13, 2024, issued Orders No. 24-UI-250008 and 24-UI-250011, dismissing claimant's requests for hearing on decisions # 83434 and 0565843 and leaving those decisions undisturbed. On April 2, 2024, claimant filed applications for review of Orders No. 24-UI-250008 and 24-UI-250011 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 24-UI-250008 and 24-UI-250011. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2024-EAB-0331 and 2024-EAB-0332).

**WRITTEN ARGUMENT:** EAB considered claimant's written argument only as to the application for review of Order No. 24-UI-250011 when reaching this decision because claimant did not include a

<sup>1</sup> As August 31, 2020, was a Monday and benefit weeks begin on Sundays, it can be inferred that the Department intended for the disqualification to be effective Sunday, August 30, 2020 (week 36-20). OAR 471-030-0005(1).

statement declaring that he provided a copy of his argument to the opposing party or parties on Order No. 24-UI-250008, as required by OAR 471-041-0080(2)(a) (May 13, 2019).

**FINDINGS OF FACT:** (1) On June 11, 2020, claimant filed an initial claim for unemployment insurance benefits. Claimant thereafter claimed benefits for the weeks from June 7 through August 15, 2020 (weeks 24-20 through 33-20). The Department paid claimant benefits for these weeks.<sup>2</sup>

(2) On February 8, 2021, the Department issued decision # 83434, concluding that claimant was discharged for misconduct on September 4, 2020, and disqualified from receiving benefits effective August 31, 2020. Order No. 24-UI-250008 Exhibit 1 at 1. The Department's records do not show any other administrative decisions were issued to claimant that day.<sup>3</sup> As August 31, 2020, was a Monday, the Department intended that the disqualification be effective Sunday, August 30, 2020 (week 36-20).

(3) Department records show that on February 8, 2020, the representative that issued decision # 83434 entered a disqualification on the claim in the Department's claims system effective week 36-20 (August 30, 2020, through September 5, 2020). For unexplained reasons, the representative also entered a second discharge disqualification on the claim that day, effective week 20-20 (May 10, 2020, through May 16, 2020).<sup>4</sup>

(4) Claimant received decision # 83434 "right around the deadline for the appeal [March 1, 2021]." Order No. 24-UI-25008 Audio Record at 8:10. Claimant did not file a request for hearing at that time because he did not wish to "contest" the conclusion that he was discharged for misconduct and disqualified from benefits effective week 36-20. Order No. 24-UI-25008 Audio Record at 10:17.

(5) On February 26, 2021, the Department issued decision # 72023, which amended and replaced decision # 83434. Decision # 72023 amended the effective date of the discharge disqualification from August 31, 2020, to August 30, 2020. The representative that issued decision # 72023 re-entered the disqualification effective date as week 36-20 in the Department's claims system, but did not remove the additional disqualification that had been entered February 8, 2021 (effective week 20-20).<sup>5</sup>

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<sup>2</sup> EAB has taken notice of these facts which are contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). 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.

<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> 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.

(6) On December 20, 2021, the Department issued decision # 0565843, which assessed an overpayment totaling \$900 of LWA benefits paid to claimant for the weeks of July 26 through August 15, 2020 (weeks 31-20 through 33-20). Decision # 0565843 cited “a prior decision dated February 8, 2021” as the basis for the conclusion that claimant was not entitled to receive the LWA benefits he was paid for weeks 31-20 through 33-20. Order No. 24-UI-250011 Exhibit 1 at 1.

(7) Claimant received decision # 0565843 in January 2022, but after the January 10, 2022, deadline to timely request a hearing on that decision. Receipt of decision # 0565843 was delayed by an ongoing issue with claimant’s mail being mistakenly held by the United States Postal Service (USPS). Claimant disagreed with the overpayment assessment but did not immediately file a late request for hearing.

(8) In April 2022, the Department began to garnish claimant’s wages to recover the LWA overpayment assessed in decision # 056543. On April 8, 2022, claimant telephoned the Department to inquire about that overpayment but did not receive an explanation for why he was not eligible for the LWA benefits he received for weeks prior to the effective date of the discharge disqualification.

(9) On May 9 and 10, 2022, the Department issued administrative decisions assessing overpayments of other types of unemployment insurance benefits for weeks 24-20 through 33-20, also citing a February 8, 2021, administrative decision for the conclusions that claimant was not entitled to the benefits he received for those weeks.<sup>6</sup>

(10) On May 13, 2022, claimant filed a request for hearing that stated, in its entirety, “I need to appeal a decision on my overpayment[.] I did not receive the letter to appeal the decision till 2 weeks after the deadline due to mail carrier errors.” Order No. 24-UI-250011 Exhibit 2 at 1. This was construed by the Office of Administrative Hearings (OAH) as timely requests for hearing on the May 9, 2022, and May 10, 2022, overpayment decisions, and late requests for hearing on decisions # 83434 and 0565843.

**CONCLUSIONS AND REASONS:** Claimant’s May 13, 2022, request for hearing should not have been construed as a late request for hearing on decision # 83434, which presented no justiciable controversy after it was cancelled by a subsequent amended decision. Claimant’s May 13, 2022, filing is instead construed as a late request for hearing on decision # 72023. Order No. 24-UI-250008 is set aside and the matter remanded for a hearing to determine whether claimant’s late request for hearing on decision # 72023 should be allowed and, if so, the merits of that decision. Order No. 24-UI-250011 is also set aside. Claimant’s late request for hearing on decision # 0565843 is allowed, and the matter remanded for a hearing on the merits of that decision, to be consolidated with the hearing on decision # 72023.

**Late request for hearing on decision # 83434.** 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

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<sup>6</sup> 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.

factors beyond an applicant's reasonable control or an excusable mistake, and defines "reasonable time" as seven days after those factors ceased to exist. OAR 471-040-0035 (August 1, 2004) provides, in relevant part, that an administrative law judge may order that a request for hearing be dismissed if the Department has "[w]ithdrawn or cancelled the determination or decision upon which the request for hearing was based." OAR 471-040-0035(2)(b).

The record shows that on February 26, 2021, the Department issued decision # 72023, which cancelled and replaced decision # 83434 in order to correct an error in the effective date of the disqualification resulting from claimant's September 4, 2020, work separation. Decision # 83434 therefore no longer presented a justiciable controversy for OAH to resolve. Accordingly, claimant's May 13, 2022, request for hearing, to the extent it expressed an intent to appeal the disqualification from benefits resulting from this work separation, should have been construed as a late request for hearing on decision # 72023, and not decision # 83434.

Because the consolidated hearing record was not fully developed as to why claimant did not file a timely request for hearing on decision # 72023, the matter is remanded for a hearing to determine whether claimant's May 13, 2022, late request for hearing on decision # 72023 should be allowed and, if so, the merits of that decision. On remand, inquiry should be made as to whether and when claimant received decision # 72023, whether he disagreed with that decision or desired to appeal it, what factors, if any, prevented timely filing of a request for hearing, and whether claimant's May 13, 2022, filing was made within a "reasonable time" after those factors ended.

**Late request for hearing on decision # 0565843.** The request for hearing on decision # 0565843 was due by January 10, 2022. Claimant filed his request for hearing on May 13, 2022, and therefore the request was late. However, the record shows that the late filing was the result of both a factor beyond claimant's reasonable control and an excusable mistake.

Claimant testified that he received decision # 0565843 "sometime in January [2022.]" Order No. 24-UI-250011 Audio Record at 10:30. He explained that due to ongoing problems at that time with USPS improperly holding his mail, receipt of decision # 0565843 was delayed until shortly after the January 10, 2022, filing deadline. Order No. 24-UI-250011 Audio Record at 9:25. This was a factor beyond claimant's reasonable control that prevented timely filing. However, this factor ceased by the end of January 2022 when claimant received the decision. Nonetheless, an additional factor continued to delay timely filing.

Decision # 0565843 stated that claimant was not entitled to LWA benefits for weeks 31-20 through 33-20 because he was "denied benefits from a prior decision dated February 8, 2021[.]" Order No. 24-UI-250011 Exhibit 1 at 1. Claimant testified that he was "trying to figure out why I'm being charged an overpayment on a decision that said it didn't begin until August 31<sup>st</sup> but they're being charged overpayment from August 15<sup>th</sup>, which was before the denial." Order No. 24-UI-250011 Audio Record at 10:30. Because the only administrative decision that had been issued to claimant on February 8, 2021 had been cancelled by the issuance of an amended administrative decision issued February 26, 2021, and because both of those administrative decisions disqualified claimant from receiving benefits *after* weeks 31-20 through 33-20, it can reasonably be inferred that claimant doubted the validity of decision # 0565843 and was understandably confused by its issuance. This confusion prevented timely filing of a request for hearing because claimant reasonably relied upon the Department's computer system to

accurately reflect and process claims in accordance with its administrative decisions. As claimant's confusion was the result of apparent Department error in entering the discharge disqualification as effective week 20-20 instead of 36-20, claimant's mistake in failing to realize that a timely appeal was necessary to remedy this error was excusable, and good cause to extend the deadline for timely filing has been shown.

Claimant further testified that the Department began to garnish his wages to satisfy the LWA overpayment beginning in April 2022. Order No. 24-UI-250011 Audio Record at 11:05. Claimant stated that he therefore telephoned the Department on April 8, 2022, for an explanation. Order No. 24-UI-250011 Audio Record at 11:20. The specifics of this conversation are not in the record. However, it can reasonably be inferred that the Department did not clarify why the overpayment was being assessed under these circumstances, and did not tell claimant that he must address the issue through filing a late request for hearing within seven days, rather than relying on the Department to correct their error. Therefore, this additional factor that continued to delay timely filing did not end until claimant received additional administrative decisions assessing overpayments for weeks prior to the disqualification in decisions # 83434 or 72023 becoming effective, clarifying the need for claimant to address the error in the claims system through appeal. These additional overpayment decisions were issued May 9, 2022, and May 10, 2022. Because claimant filed his late request for hearing on decision # 0565843 on May 13, 2022, he did so within a "reasonable time" of when the factor that prevented timely filing ended. Accordingly, claimant's late request for hearing on decision # 0565843 is allowed, and a hearing on the merits of that decision is required.

Because the remand hearing on the late request for hearing on decision # 72023 may affect the outcome of the remand hearing on the merits of decision # 0565843, OAH should consolidate the remand hearings on these matters.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary for a determination of whether the late request for hearing on decision # 72023 should be allowed and, if so, the merits of that decision, Order No. 24-UI-250008 is reversed, and the matter is remanded. Order No. 24-UI-250011 is also set aside, claimant's late request for hearing on decision # 0565843 is allowed, and the matter remanded for a hearing on the merits, to be consolidated with the hearing on decision # 72023.

**DECISION:** Order No. 24-UI-250008 is set aside and the matter remanded for a hearing to determine whether claimant's late request for hearing on decision # 72023 should be allowed and, if so, the merits of that decision. Order No. 24-UI-250011 is set aside. Claimant's late request for hearing on decision # 0565843 is allowed and the matter remanded for a hearing on the merits of that decision, consolidated with the hearing on decision # 72023.

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

**DATE of Service:** May 15, 2024

**NOTE:** The failure of any party to appear at the consolidated hearing on remand will not reinstate Orders No. 24-UI-250008 or 24-UI-250011 or return these matters to EAB. Only a timely application for review of the relevant subsequent order will cause that 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**

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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.

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