

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0340

Modified
Request to Reopen Allowed
Late Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On April 18, 2022, 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 \$1,881 in regular unemployment insurance (regular UI) and \$3,600 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant must repay (decision # 81653). On May 9, 2022, decision # 81653 became final without claimant having filed a request for hearing. On June 8, 2022, claimant filed a late request. ALJ Kangas considered claimant's request, and on September 16, 2022, issued Order No. 22-UI-202810, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by September 30, 2022. On September 27, 2022, claimant filed a timely response to the appellant questionnaire. The Office of Administrative Hearings (OAH) subsequently mailed a letter stating that Order No. 22-UI-202810 was vacated and that a new hearing would be scheduled to determine whether to allow claimant's late request for hearing and, if so, the merits of decision # 81653.

On May 1, 2023, OAH served notice of a hearing scheduled for May 15, 2023. On May 15, 2023, claimant failed to appear at the hearing, and on May 16, 2023, ALJ Enyinnaya issued Order No. 23-UI-224942, re-dismissing claimant's request for hearing due to his failure to appear, leaving decision # 81653 undisturbed. On June 2, 2023, claimant filed a timely request to reopen the hearing. On March 26, 2024, ALJ Goodrich conducted a hearing and issued Order No. 24-UI-250943, allowing claimant's request to reopen the hearing and re-dismissing claimant's late request for hearing, leaving decision # 81653 undisturbed. On April 3, 2024, claimant filed an application for review of Order No. 24-UI-250943 with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant's argument contained information that was not part of the hearing record, and did not show that the new information was relevant and material to EAB's determination in this matter. 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. EAB considered claimant's argument only to the extent it was relevant and material, and based on the hearing record.

The parties may offer new information, such as the information contained in claimant's written argument, into evidence at the remand hearing. At that time, it will be determined if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing regarding documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties in advance of the hearing at their addresses as shown on the certificate of mailing for the notice of hearing.

EAB notes that the new information contained within claimant's written argument largely relates to the disqualifying work separation decision which led to the overpayment assessed in decision # 81653. Department records show that the work separation decision (# 83626) was issued on December 15, 2021, that claimant filed a late request for hearing on that decision that was dismissed as untimely, that claimant timely responded to the appellant questionnaire on that order, and that on March 8, 2023, after considering claimant's response, ALJ Kangas issued Order No. 23-UI-218295, re-dismissing claimant's late request for hearing and leaving decision # 82326 undisturbed. Order No. 23-UI-218295 became final on March 28, 2023. Records do not show that claimant ever filed an application for review of Order No. 23-UI-218295.

The effect of the above is that claimant is not entitled to a hearing on the merits of decision # 83626, regarding the work separation itself. That matter is not before EAB, and is outside the scope of the remand hearing on this matter, which concerns only the overpayment that was assessed as a result of the disqualification under decision # 83626. In order for claimant to proceed to the merits of decision # 83626, he would need to file a late application for review of Order No. 23-UI-218295, show that he had good cause for filing the late application for review and filed the application for review within the "reasonable time" period allowed under OAR 471-041-0070(2)(b) (May 13, 2019), and then show that he met the requirements for the late request for hearing on decision # 83626.¹

EAB considered the entire hearing record. EAB agrees with Order No. 24-UI-250943's findings of fact, reasoning, and conclusion that claimant's request to reopen the May 15, 2023, hearing should be allowed. Pursuant to ORS 657.275(2), that portion of Order No. 24-UI-250943 is **adopted**. The remainder of this decision addresses claimant's late request for hearing on decision # 81653.

FINDINGS OF FACT: (1) On April 18, 2022, the Department mailed decision # 81653 to claimant's address on file with the Department. Decision # 81653 stated, "If you disagree with the amount of the overpayment, you have the right to appeal this decision. Any appeal from this decision must be filed on or before May 9, 2022, to be timely." Exhibit 1 at 2.

(2) Claimant received decision # 81653 on April 19, 2022. Decision # 81653 explained that claimant could pursue waiver of the overpayment "if you complete an Overpayment Waiver request form and are determined to be eligible." Exhibit 1 at 2. Neither decision # 81653 nor the appeal rights document enclosed with decision # 81653 explained that claimant could file both a waiver request and a hearing request simultaneously, and neither explained the difference between the two remedies. As such, while claimant understood that he could challenge the overpayment assessed in decision # 81653 either by filing a request for hearing on the decision or by filing a request for waiver of the overpayment, he did not understand the difference between the two or that he could pursue both.

¹ See discussion of the requirements for allowing a late request for hearing, below.

(3) On April 21, 2022, claimant filed a request for waiver of the overpayment of \$1,881 in regular UI benefits, which the Department initially rejected on April 22, 2022. Exhibit 2 at 1. On April 27, 2022, claimant re-submitted the waiver request, which he mistakenly believed to be “an appeal.” Exhibit 3 at 5. The Department subsequently waived repayment of claimant’s regular UI overpayment balance. At that point, claimant believed that the overpayment had been fully waived, and did not understand that a separate waiver request would be required for the Department to consider waiver of the overpaid FPUC benefits.

(4) On June 6, 2022, claimant received a bill from the Department for the remaining FPUC overpayment balance. Once claimant received that bill, he realized that he had not actually filed an appeal. On June 8, 2022, claimant filed a late request for hearing on decision # 81653.

CONCLUSIONS AND REASONS: Order No. 24-UI-250943 is modified. Claimant’s late request for hearing on decision # 81653 is allowed, and this matter remanded for a hearing on the merits of that decision.

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 # 81653 was due by May 9, 2022. Because claimant did not file his request for hearing until June 8, 2022, the request was late. However, the record shows that claimant filed the late request for hearing due an excusable mistake, and that he did so within a reasonable time after the factors which prevented a timely filing ended.

Claimant timely received decision # 81653 and understood that he could appeal the decision or request a waiver of the assessed overpayment. He did not understand the distinction between the two remedies, however, and did not understand that he could pursue both simultaneously. The advisories provided to claimant with decision # 81653 did not clarify either point. Claimant filed a waiver request shortly after he received the decision, which the Department initially rejected. A few days later, claimant filed another request for waiver, which he mistakenly believed constituted an appeal of the overpayment decision itself. Once the Department granted claimant’s waiver request, he believed he had successfully addressed the matter, and did not learn otherwise until he received a bill for the outstanding balance of overpaid FPUC benefits on June 6, 2022.

The above shows that claimant made substantial, and timely, efforts to comply with the processes that would allow him to pursue a reversal or waiver of the assessed overpayment. It further shows that claimant’s failure to file a timely request for hearing was due to his inability to follow the instructions on the administrative decision, owing, in part, to the lack of clarity offered in those instructions. Therefore, claimant’s failure to file a timely request for hearing was the result of an excusable mistake.

The factors which prevented a timely filing ceased on June 6, 2022, when claimant received the bill from the Department and realized his mistake. Claimant filed his late request for hearing two days later,

on June 8, 2022. Therefore, claimant filed his late request for hearing within a reasonable time of when the factors which prevented a timely filing ended.

For the above reasons, claimant had good cause for failing to file a timely request for hearing, and filed his late request for hearing within a reasonable time. Claimant's late request for hearing therefore is allowed, and claimant is entitled to a hearing on the merits of decision # 81653.

DECISION: Order No. 24-UI-250943 is modified, as outlined above.

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

DATE of Service: May 17, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-250943 or return this matter 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 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 الاستئناف 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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