

**EMPLOYMENT APPEALS BOARD DECISION**  
**2024-EAB-0349**

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

**PROCEDURAL HISTORY:** On December 30, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work for the weeks of June 28, 2020<sup>1</sup> through July 11, 2020 (weeks 27-20 through 28-20) and therefore was ineligible to receive unemployment insurance benefits for those weeks and until the reason for the denial ended (decision # 104021). On January 19, 2021, decision # 104021 became final without claimant having filed a request for hearing. On March 8, 2022, claimant filed a late request for hearing.

On November 2, 2023, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for November 16, 2023. On November 16, 2023, claimant failed to appear at the hearing, and ALJ Frank issued Order No. 23-UI-241353, dismissing claimant's request for hearing due to his failure to appear and leaving decision # 104021 undisturbed. On December 6, 2023, Order No. 23-UI-241353 became final without claimant having filed a request to reopen the November 16, 2023, hearing. On or around December 19, 2023, claimant filed a late request to reopen the hearing.

On March 20, 2024, ALJ Enyinnaya conducted a hearing at which the Department failed to appear, and on March 28, 2024, issued Order No. 24-UI-251070, allowing claimant's request to reopen the November 16, 2023, hearing, canceling Order No. 23-UI-241353, re-dismissing claimant's request for hearing on decision # 104021 as late without a showing of good cause, and leaving that decision undisturbed. On April 8, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record. EAB agrees with the portion of Order No. 24-UI-251070 which allowed claimant's request to reopen the November 16, 2023, hearing. Pursuant to ORS

<sup>1</sup> Decision # 104021 stated that claimant was ineligible for benefits effective June 27, 2020. Exhibit 1 at 3. However, as benefit weeks begin on Sundays and June 27, 2020, was a Saturday, the date is presumed to be a scrivener's error, and June 28, 2020 is likewise presumed to be the intended start date of claimant's ineligibility.

657.275(2), that portion of Order No. 24-UI-251070 is **adopted**. The remainder of this decision addresses claimant's late request for hearing on decision # 104021.

**FINDINGS OF FACT:** (1) On December 30, 2020, the Department mailed decision # 104021 to claimant's address on file with the Department. Decision # 104021 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 January 19, 2021." Exhibit 1 at 4. Decision # 104021 also stated, "**IMPORTANT:** If you were paid benefits for any week covered by this decision, you may have to pay us back. You'll get information about how much you owe and how to pay us back, after the appeal period." Exhibit 1 at 4 (emphasis in original).

(2) Claimant received decision # 104021 in early January 2021. Claimant had stopped claiming benefits in June 2020. When claimant received decision # 104021, he believed that he "was being denied [because he] was no longer claiming [benefits]." Transcript at 13. Claimant took no further action at that time.

(3) On February 18, 2022, the Department served notice of an administrative decision, based in part on decision # 104021, concluding that claimant received benefits to which he was not entitled, and assessing an overpayment of \$572 in regular unemployment insurance (regular UI) benefits and \$1,200 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay to the Department (decision # 130921).<sup>2</sup> On March 8, 2023, upon receipt of decision # 130921, claimant contacted the Department, believing the overpayment to be a mistake. A Department representative advised claimant to file a request for hearing, and claimant did so.

**CONCLUSIONS AND REASONS:** Claimant's late request for hearing on decision # 104021 is allowed, and claimant is entitled to 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 # 104021 was due by January 19, 2021. Because claimant did not file the request until March 8, 2022, the request was late. The order under review concluded, in relevant part, that claimant did not have good cause for filing the late request for hearing because despite having timely received decision # 104021, he "ignored the decision until he received the overpayment decision in 2022." Order No. 24-UI-251070 at 5. Although this is factually accurate, the record nevertheless

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<sup>2</sup> EAB has taken notice of these facts, which are contained within 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 fact will remain in the record.

shows that the language in decision # 104021 was insufficient to satisfy due process requirements under the 14<sup>th</sup> Amendment to the United States Constitution because it failed to provide adequate notice of the decision's implications on the claimant's right to benefits.<sup>3</sup>

While decision # 104021 notified claimant that he was ineligible for benefits for a series of weeks for which he had already claimed benefits, it did not identify the amount (or approximation) of the overpayment that could result from its determination of ineligibility. In order for claimant to have meaningfully understood the implications of decision # 104021, due process required the Department to inform claimant of those implications resulting from the retroactive change in their benefit entitlement *during the period in which claimant could have timely requested a hearing on that administrative decision*. In other words, because the Department did not notify claimant of the amount, or approximation thereof, of the overpayment that might result from decision # 104021's denial of benefits, claimant was unable to make an informed decision as to "whether to spend the time and resources challenging the decision."<sup>4</sup> This failure to provide claimant with due process constituted a factor beyond his reasonable control, and claimant therefore had good cause for filing the late request for hearing.

Further, claimant filed the late request for hearing within a reasonable time of when the factors which prevented the timely filing ceased. The record does not show when exactly claimant received the overpayment decision that resulted from the denial under decision # 104021. Nevertheless, the record *does* show that claimant was prompted to file his request for hearing on March 8, 2023, after speaking to a Department representative who advised him to do so. It can reasonably be inferred that prior to claimant's contact with the Department, claimant was not, due to the inadequate notice in decision # 104021, aware that the assessed overpayment resulted from the denial under decision # 104021 or that he was able to file a late request for hearing on decision # 104021. That factor ceased when the Department representative advised claimant he could file the request for hearing. As claimant did so the same day, he filed his request within a reasonable time after the factors which prevented a timely filing ceased. Therefore, claimant's late request for hearing on decision # 104021 is allowed, and claimant is entitled to a hearing on the merits of that decision.

**DECISION:** Order No. 24-UI-251070 is modified, as outlined above, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service:** May 23, 2024

**NOTE:** If decision # 104021 is modified or reversed on remand or subsequent appeals, any other administrative decision that was issued based on the conclusions of decision # 104021, such as an assessment of overpayment or denial of an overpayment waiver, may be affected, even if such decisions are under appeal or would otherwise be considered final. The Department should therefore consider

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<sup>3</sup> U.S. Const. amend. XIV, §1 provides, in relevant part, "[N]or shall any State deprive any person of life, liberty, or property, without due process of law[.]"

<sup>4</sup> See *Casillas v. Gerstenfeld*, No. 22CV18836 (Mult. Co. Cir. Ct. Apr. 5, 2024) Letter Opinion on Cross Motions for Summary Judgment at 10-11; See also generally *Mullane v. Central Hanover Bank & Trust Co.*, 339 US 306 (1950).

whether attempts to recover such an overpayment while the overpayment's validity is subject to direct or indirect appellate review would violate claimant's right to due process or statutory provisions. *See, e.g.*, ORS 657.310(3); ORS 657.315(2).

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-251070 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 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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