

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0453

Late Application for Review Allowed
Order No. 23-UI-218295 Reversed
Late Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On December 15, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving benefits effective February 21, 2021 (decision # 83626). On January 4, 2022, decision # 83626 became final without claimant having filed a request for hearing. On June 8, 2022, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on September 16, 2022, issued Order No. 22-UI-202811, 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. ALJ Kangas considered claimant's response, and on March 8, 2023, issued Order No. 23-UI-218295 re-dismissing claimant's request for hearing as late without good cause, leaving decision # 83626 undisturbed. On March 28, 2023, Order No. 23-UI-218295 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On May 22, 2024, claimant filed a late application for review of Order No. 23-UI-218295 with EAB.

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of claimant's written statement enclosed with the late application for review, and has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 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 exhibit will remain in the record.

FINDINGS OF FACT: (1) On December 15, 2021, the Department mailed decision # 83626 to claimant's address on file with the Department, which was an address in Portland, Oregon. Decision #

83626 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 4, 2022.” Exhibit 1 at 2. Decision # 83626 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 2 (emphasis in original).

(2) On December 30, 2021, claimant received decision # 83626 in the mail. Claimant “did not understand the letter, nor did [he] understand the need to appeal” it. Exhibit 3 at 5.

(3) On April 18, 2022, the Department served notice of an administrative decision based in part on decision # 83626, concluding that claimant received state and federal benefits to which he was not entitled and must repay (decision # 81653). The Department mailed decision # 81653 to claimant at an address in Beavercreek, Oregon. Claimant received decision # 81653 on April 19, 2022. 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, or the difference between the two procedures. 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. On April 27, 2022, claimant filed a request for waiver of the assessed overpayment.¹

(4) The Department waived the state benefit portion of claimant’s overpayment balance after claimant submitted the April 27, 2022, waiver request, which led claimant to believe that the matter had been settled. On May 9, 2022, decision # 81653 became final without claimant having filed a request for hearing. On June 6, 2022, claimant received a bill from the Department for the remaining overpayment balance of federal benefits. Once claimant received that bill, he realized that he had not actually filed an appeal on decision # 81653. On June 8, 2022, claimant filed a late request for hearing construed as on both decisions # 83626 and 81653.² In his request, claimant stated, “I wish to appeal this decision on the grounds that I did not leave [the employer] voluntarily, rather out of fear of contracting COVID-19 in the highly contagious indoor sauna/spa environment.” Exhibit 2 at 2.

(5) On September 16, 2022, the Office of Administrative Hearings (OAH) mailed claimant Orders No. 22-UI-202811 and 22-UI-202810, dismissing claimant’s requests for hearing on decisions # 83626 and 81653, respectively, as late, subject to claimant’s right to renew the requests by responding to appellant questionnaires. OAH mailed Order No. 22-UI-202811, regarding the request for hearing on decision # 83626, to the Portland address, while they mailed Order No. 22-UI-202810, regarding decision # 81653,

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 fact will remain in the record.

² 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 fact will remain in the record.

to the Beavercreek address.³ Order No. 22-UI-202811 was returned to OAH as undeliverable. Nevertheless, claimant filed a timely response to the appellant questionnaires attached to both orders.

(6) On March 8, 2023, after ALJ Kangas considered claimant's response to the appellant questionnaire attached to Order No. 22-UI-202811, OAH mailed claimant Order No. 23-UI-218295, re-dismissing claimant's late request for hearing on decision # 83626 as late without good cause. That order was mailed to the Portland address, and was returned to OAH as undeliverable.

(7) However, OAH vacated Order No. 22-UI-202810 and scheduled a hearing on whether to allow claimant's late request for hearing on decision # 81653 and, if so, the merits of that decision. ALJ Goodrich ultimately conducted the hearing and issued Order No. 24-UI-250943, re-dismissing claimant's late request for hearing on decision # 81653. Claimant filed a timely application for review of Order No. 24-UI-250943 with EAB. On May 17, 2024, EAB issued EAB Decision 2024-EAB-0340, allowing claimant's late request for hearing on decision # 81653 and remanding the matter for a hearing on the merits of that decision.⁴

(8) On May 21, 2024, claimant received EAB Decision 2024-EAB-0340, which alerted him to the fact "that in order for [him] to argue the merits of decision # 83626, [he] would need to file a separate late application for review of [O]rder No. 23-UI-218295." EAB Exhibit 1 at 1–2. Prior to the receipt of EAB Decision 2024-EAB-0340, claimant "did not understand that the underlying work separation... was separate from the overpayment decision[.]" EAB Exhibit 1 at 1.

(9) On May 22, 2024, claimant filed a late application for review of Order No. 23-UI-218295.

CONCLUSIONS AND REASONS: Claimant's late application for review of Order No. 23-UI-218295 is allowed. Order No. 23-UI-218295 is reversed, claimant's late request for hearing on decision # 83626 is allowed, and this matter remanded for a hearing on the merits of that decision.

Late application for review. An application for review is timely if it is filed within 20 days of the date that the Office of Administrative Hearings (OAH) mailed the order for which review is sought. ORS 657.270(6); OAR 471-041-0070(1) (May 13, 2019). The 20-day filing period may be extended a "reasonable time" upon a showing of "good cause." ORS 657.875; OAR 471-041-0070(2). "Good cause" means that factors or circumstances beyond the applicant's reasonable control prevented timely filing. OAR 471-041-0070(2)(a). A "reasonable time" is seven days after the circumstances that prevented the timely filing ceased to exist. OAR 471-041-0070(2)(b). A late application for review will be dismissed unless it includes a written statement describing the circumstances that prevented a timely filing. OAR 471-041-0070(3).

³ 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 fact will remain in the record.

⁴ 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 fact will remain in the record.

The application for review of Order No. 23-UI-218295 was due by March 28, 2023. Because claimant did not file his application for review until May 22, 2024, the application for review was late.

The record shows that claimant failed to file a timely application due to factors or circumstances beyond his reasonable control. The Department mailed decision # 83626 to an address in Portland on December 15, 2021, and mailed decision # 81653 to an address in Beavercreek on April 18, 2022. As claimant timely received both administrative decisions, it can be inferred that claimant moved from the Portland address to the Beavercreek address sometime between the issuance of those two decisions. It can further be inferred that claimant updated his address with the Department prior to the issuance of decision # 81653, as the Department mailed that decision to the Beavercreek address. Likewise, it appears that OAH was apprised of the change in address, as it issued Order No. 22-UI-202810, regarding decision # 81653, to the Beavercreek address in September 2022. Nevertheless, OAH issued Order No. 22-UI-202811, regarding decision # 83626, to the prior address in Portland on the same day. Despite this order being returned as undeliverable, and OAH apparently already having claimant's updated Beavercreek address, OAH nevertheless mailed the order under review in this matter to the prior address in Portland in March 2023. That also order was returned as undeliverable.

Further, it does not appear that claimant ever received a copy of the order under review. The record contains no indication that the order was reissued to claimant's correct address, and claimant's statement enclosed with the late application for review did not indicate that he had received it. Instead, claimant noted in his enclosed statement that he did not understand that the voluntary quit decision and the overpayment decision were separate decisions requiring separate appeals, and that the matter was only clarified when he received EAB Decision 2024-EAB-0340 on May 21, 2024. EAB Exhibit 1 at 1. Because claimant was likely unaware of the existence of the order under review or his need to appeal it until he received EAB Decision 2024-EAB-0340, his failure to file a timely application for review was the result of factors or circumstances beyond his reasonable control that ended on May 21, 2024. Claimant therefore had good cause for filing the late application for review, and since he filed the late application for review the day after those factors or circumstances ended, he did so within a reasonable time. Claimant's late application for review therefore is allowed.

Late request for hearing. 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 # 83626 was due by January 4, 2022. Because claimant did not file the request until June 8, 2022, the request was late. The record shows that claimant failed to file a timely request for hearing primarily because he did not understand that decision # 83626 and 81653 constituted separate decisions that required separate appeals. The record further shows that claimant believed both matters settled when he received notice that part of the assessed overpayment had been waived, and that he finally requested hearings on both decisions only when he realized that the overpayment balance had not been fully waived.

The order under review concluded that this did not constitute good cause for filing the late request for hearing, explaining, “Carefully reading the administrative decision and following its instructions were within the appellant’s reasonable control. If the appellant did not understand any part of the administrative decision, or whether he should file an appeal, it was within his reasonable control to timely contact the Employment Department for assistance.” Order No. 23-UI-218295 at 2. However, the record nevertheless shows that the language in decision # 83626 was insufficient to satisfy due process requirements under the 14th Amendment to the United States Constitution because it failed to provide adequate notice of the decision’s implications on claimant’s right to benefits.⁵

While decision # 83626 notified claimant that he was disqualified from receiving benefits as of a particular date, it did not identify the specific weeks of benefits for which he would be denied or the amount (or approximation) of the overpayment that could result from its determination of ineligibility. In order for claimant to have meaningfully understood decision # 83626, due process required the Department to inform claimant of the consequences of the retroactive change in his 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 # 83626’s disqualification from benefits, claimant was unable to make an informed decision as to “whether to spend the time and resources challenging the decision.”⁶ This failure to provide claimant with due process constituted a factor beyond his reasonable control.

As a result, claimant’s failure to file a timely request for hearing on decision # 83626 was an excusable mistake. On April 19, 2022, claimant received decision # 81653, the overpayment decision that resulted from the disqualification under decision # 83626. Claimant understood that he could appeal the decision or request a waiver of the assessed overpayment. He did not understand the distinction between the two procedures, 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 granted as to the balance of overpaid state benefits. 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 federal 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 decision #81653, partly due to the lack of clarity offered in those instructions. Therefore, as EAB Decision 2024-EAB-0340 concluded, claimant’s failure to file a timely request for hearing on decision # 81653 was the result of an excusable mistake.⁷ The same is true here regarding decision # 83626.

⁵ 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[.]”

⁶ 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).

⁷ See EAB Decision 2024-EAB-0340.

Claimant there established good cause for failing to file a timely request for hearing on decision # 83626.

Claimant's late request for hearing on decision # 83626 also was filed within a reasonable time. Although claimant expressed a desire to appeal both the voluntary quit decision and the resulting overpayment decision when he filed his late request for hearing, which led the Department to construe the request as applicable to both administrative decisions, claimant still was not aware at that time that he was separately required to appeal each decision. As noted above, the Department's failure to provide claimant with due process on this point meant that he was not reasonably apprised of the need to separately appeal both decisions. Therefore, the factors that prevented claimant's timely filing on decision # 83626 did not end until he filed the June 8, 2022, request for hearing that was construed as applicable to both decisions. Because those factors ended on the same day that claimant filed the request for hearing, he filed the late request for hearing within a reasonable time. Claimant's late request for hearing on decision # 83626 is therefore allowed, and claimant is entitled to a hearing on the merits of that decision.

Because the remand on the merits of decision # 83626 may affect the outcome of the merits in decision # 81653, OAH should consolidate the remand hearings on these matters.

DECISION: Claimant's late application for review of Order No. 23-UI-218295 is allowed. Order No. 23-UI-218295 is set aside, 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 31, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-218295 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymoz.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.