

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0469

Late Application for Review Allowed
Order No. 24-UI-253743 Affirmed ~ Late Request for Hearing Allowed ~ Disqualification
Order No. 24-UI-253842 Affirmed ~ Overpayment, No Penalties

PROCEDURAL HISTORY: On July 8, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving unemployment insurance benefits effective July 19, 2020 (decision # 92223). On July 28, 2021, decision # 92223 became final without claimant having filed a request for hearing. On April 15, 2022, the Department served notice of an administrative decision, based in part on decision # 92223, concluding that claimant received benefits to which she was not entitled and assessing an overpayment of \$6,168 in regular unemployment insurance (regular UI) benefits, \$7,800 in Federal Pandemic Unemployment Compensation (FPUC) benefits, and \$6,187 in Pandemic Emergency Unemployment Compensation (PEUC) benefits that claimant was required to repay to the Department (decision # 160812). On May 2, 2022, claimant filed a late request for hearing on decision # 92223 and a timely request for hearing on decision # 160812.

On May 2, 2022, ALJ Lucas conducted a hearing on each matter, and on May 8, 2024 issued Order No. 24-UI-253743, allowing claimant's late request for hearing on decision # 92223 and affirming that decision on the merits. On May 9, 2024, ALJ Lucas issued Order No. 24-UI-253842, modifying decision # 160812 by concluding that claimant was overpaid \$2,412 in PEUC benefits and \$2,700 in FPUC benefits that she was liable to repay through deduction from future benefits. On May 28, 2024, Order No. 24-UI-253743 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On May 29, 2024, claimant filed a late application for review of Order No. 24-UI-253743 and a timely application for review of Order No. 24-UI-253842 with EAB.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 24-UI-253743 and 24-UI-253842. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2024-EAB-0469 and 2024-EAB-0468).

WRITTEN ARGUMENT: EAB considered claimant's written argument when reaching this decision, but only as to her application for review of Order No. 24-UI-253842 because claimant did not include a

statement declaring that she provided a copy of her argument to the opposing party or parties to Order No. 24-UI-253743 as required by OAR 471-041-0080(2)(a) (May 13, 2019).

Claimant stated in her argument that portions of the overpayment had already been recovered through means other than the offset of future benefits, namely income tax refund intercepts. Claimant's Argument at 1. ORS 657.310(3) provides, in relevant part, "A decision of the director under this section does not authorize the recovery of the amount of any benefits paid to an individual until the decision is final[.]" Though decision # 160812 asserted that recovery of the alleged overpayments was governed by ORS 657.310, claimant filed a timely request for hearing on that decision, at no point thereafter did the decision become final, and the decision has now been modified on appeal such that recovery is not governed by ORS 657.310. Further, ORS 657.312(2)(d) and OAR 471-030-0058(1)(d) (December 8, 2019) limit recovery of overpayments through federal tax refund intercepts to situations where the appeal period for "contesting the debt and the element of causation" or "contesting the liability," respectively, have expired.¹ It is therefore unclear why the Department would have intercepted claimant's 2023 and 2024 tax refunds *after* her timely request for hearing on decision # 160812, filed May 2, 2022, and before her appeal has been finally adjudicated.

Furthermore, as this decision affirms Order No. 24-UI-253842's conclusion that recovery of the overpayments is governed by ORS 657.315, rather than ORS 657.310, by adopting that order's findings and conclusions as discussed below, recovery of the overpayments is not authorized by means other than offset from future unemployment insurance benefits. Accordingly, claimant may wish to contact the Department to inquire about the refund of any funds already recovered through tax intercepts. Claimant may also wish to file a request to waive recovery of the overpaid benefits. Further information on how to do so is found at the end of this decision.

FINDINGS OF FACT: (1) Order No. 24-UI-253743, mailed to claimant's address on file with the Office of Administrative Hearings (OAH) on May 8, 2024, stated, "You may appeal this decision by filing the attached form Application for Review with the Employment Appeals Board within 20 days of the date that this decision is mailed." Order No. 24-UI-253743 at 5. Order No. 24-UI-253743 also stated on its Certificate of Mailing, "Any appeal from this Order must be filed on or before May 28, 2024 to be timely."

(2) On May 9, 2024, Order No. 24-UI-253842 was mailed to claimant, stating that an application for review of that order was due by May 29, 2024. The hearing on that matter had been held on May 2, 2024, immediately following the hearing on which Order No. 24-UI-253743 was based.

(3) On May 29, 2024, claimant filed applications for review of Orders No. 24-UI-253743 and 24-UI-253842 with EAB.

CONCLUSIONS AND REASONS: Claimant's late application for review of Order No. 24-UI-253842 is allowed. Orders No. 24-UI-253743 and 24-UI-253842 are affirmed.

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

¹ ORS 657.312(2)(d) also applies to intercepts of Oregon income tax refunds. *See* ORS 657.312(4).

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).

The application for review of Order No. 24-UI-253743 was due by May 28, 2024. Because claimant’s application for review of Order No. 24-UI-253743 was filed on May 29, 2024, it was filed late.

Though hearings were held on decisions # 92223 and 160812 the same day and the matters were closely related, Order No. 24-UI-253842 was issued one day later than Order No. 24-UI-253743, and therefore the application for review of Order No. 24-UI-253842 was due by May 29, 2024 rather than May 28, 2024. It can reasonably be inferred from the record that claimant mistakenly believed that both applications for review were due by May 29, 2024, and that mistake caused her application for review of Order No. 24-UI-253743 to be filed one day late. Under these circumstances, claimant’s mistake is excusable and good cause exists to extend the deadline for timely filing one day. The late application for review was therefore filed within a seven-day “reasonable time” after the factor that prevented timely filing ceased. Accordingly, claimant’s late application for review of Order No. 24-UI-253743 is allowed.

EAB considered the entire consolidated hearing record. EAB agrees with Order No. 24-UI-253743’s findings of fact, reasoning, and conclusion that claimant voluntarily quit work without good cause and was disqualified from receiving benefits. Pursuant to ORS 657.275(2), Order No. 24-UI-253743 is **adopted**.

Additionally, EAB agrees with Order No. 24-UI-253842’s findings of fact, reasoning, and conclusion that claimant was overpaid \$2,412 in PEUC benefits and \$2,700 in FPUC benefits that she was liable to repay through deduction from future benefits under ORS 657.315. Pursuant to ORS 657.275(2), Order No. 24-UI-253842 is **adopted**.

DECISION: Claimant’s late application for review of Order No. 24-UI-253743 is allowed. Orders No. 24-UI-253743 and 24-UI-253842 are affirmed.

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

DATE of Service: July 3, 2024

NOTE: The Department may defer recovery or completely waive the overpaid amount if certain standards are met. If you apply but do not qualify for a waiver, other relief may be available, such as temporarily pausing collection efforts or limiting reductions of current benefits. It is important to apply for a waiver as soon as possible because waivers are not retroactive. For more information on requesting a waiver, go to <https://unemployment.oregon.gov/overpayments> or call 503-947-1995.

The Overpayment Waiver Application is available for download at <https://unemployment.oregon.gov/uploads/docs/FORM129-EN.pdf> and can be submitted in any of these ways:

- **Frances Online: Log in to your Frances Online account and use “Send a Message”**
- **Use the Contact Us form online at: unemployment.oregon.gov/contact**
- **Email: UIOverpayments@employ.oregon.gov – Subject: “Waiver Request”**
- **Fax: 503-947-1811 – ATTN: BPC Waiver Requests**
- **U.S. Mail: BPC Overpayment Waivers, PO Box 14130, Salem, OR 97311**

NOTE: You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at courts.oregon.gov. Once on the website, use the ‘search’ function to search for ‘petition for judicial review employment appeals board’. A link to the forms and information will be among the search results.

Visit www.oregonlawhelp.org for more information about free or low-cost legal services in your area.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.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 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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www.Oregon.gov/Employ/eab

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