

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0497

Order No. 24-UI-254921 – Affirmed – Late Request for Hearing Dismissed
Order No. 24-UI-258938 – Reversed – No Overpayment

PROCEDURAL HISTORY: On February 5, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work from December 20 through 26, 2020 (week 52-20) and was not eligible for benefits for that week (decision # 145556). On February 25, 2021, decision # 145556 became final without claimant having requested a hearing. On July 15, 2022, the Department served notice of an administrative decision based partly on decision # 145556, concluding that claimant received benefits to which he was not entitled and assessing an overpayment of \$310 in Pandemic Emergency Unemployment Compensation (PEUC) and \$300 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay (decision # 104257).

On August 4, 2022, claimant filed a late request for hearing on decision # 145556 and a timely request for hearing on decision # 104257. On May 14, 2024, ALJ Chiller conducted a hearing regarding both decisions. On May 23, 2024, ALJ Chiller issued Order No. 24-UI-254921 dismissing claimant's request for hearing on decision # 145556 as late without good cause, and Order No. 24-UI-254938 modifying decision # 104257 by concluding that claimant received benefits to which he was not entitled and assessing an overpayment of \$310 in Pandemic Emergency Unemployment Compensation (PEUC)¹ and \$300 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was liable to repay by deduction of future benefits payable. On June 8, 2024, claimant filed applications for review of Orders No. 24-UI-254921 and 24-UI-254938 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 24-UI-254921 and 24-UI-254938. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2024-EAB-0496 and 2024-EAB-0497).

¹ Order No. 24-UI-254938 stated that the \$310 overpayment was an overpayment under the regular UI program. Order No. 24-UI-254938 at 2, 8. However, this is presumed to be a scrivener's error and to have meant to have instead stated that the \$310 overpayment was an overpayment under the PEUC program, as the record shows that the \$310 of benefits received were PEUC benefits. Transcript at 25; Exhibit 3 at 1.

WRITTEN ARGUMENT: EAB considered claimant’s written argument when reaching this decision.

FINDINGS OF FACT: (1) Claimant filed an initial claim for unemployment insurance benefits on April 4, 2020. The Department determined that claimant’s weekly benefit amount was \$310. Claimant claimed benefits for the week of December 20 through 26, 2020 (week 52-20). This is the week at issue. The Department paid claimant \$310 in PEUC and \$300 in FPUC benefits for the week at issue. The Department made this payment on January 19, 2021. Exhibit 3 at 3.

(2) On February 5, 2021, the Department mailed decision # 145556 to claimant’s address on file with the Department. Decision # 145556 concluded that claimant was not eligible for benefits for the week at issue because he was not available for work. Decision # 145556 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 February 25, 2021.” Exhibit 1 at 2.

(3) Decision # 145556 did not advise that if claimant had previously received benefits, that he may then have an overpayment that he must repay. Decision # 145556 also did not state an approximate amount of the overpayment that might result from its denial of benefits.

(4) Claimant received decision # 145556 after it was mailed. Claimant did not file a timely request for hearing on decision # 145556.

(5) On July 15, 2022, the Department issued decision # 104257 concluding, based partly on decision # 145556, that claimant was denied benefits for the week at issue and assessing an overpayment amount for the \$310 in PEUC and \$300 in FPUC benefits paid for that week. Decision # 104257 stated that the Department was authorized to require claimant to repay the overpayment amount, or deduct the overpayment from future benefits payable. Exhibit 3 at 1-2. Decision # 104257 further stated, “If you have not had a hearing on the issue that caused the overpayment, and you wish to do so now, you must specifically request a hearing on that earlier administrative decision.” Exhibit 3 at 2.

(6) Within five business days of July 15, 2022, or no later than July 22, 2022, claimant received decision # 104257.

(7) On August 4, 2022, claimant filed a late request for hearing on decision # 145556 and a timely request for hearing on decision # 104257.

CONCLUSIONS AND REASONS: Order No. 24-UI-254921 is affirmed. Claimant’s late request for hearing on decision # 145556 is dismissed. Order No. 24-UI-254938 is reversed. Claimant was overpaid benefits for the week at issue. However, the Department was not authorized to amend the original decision allowing payment for the week at issue because they were paid more than a year prior to the issuance of the overpayment decision, and claimant therefore does not have to repay the overpaid benefits.

Late Request for Hearing on Decision # 145556. 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 deadline to file a timely request for hearing on decision # 145556 was February 25, 2021. Because claimant did not file his request for hearing on decision # 145556 until August 4, 2022, the request for hearing was late.

Claimant's late request for hearing on decision # 145556 is dismissed. Although claimant established good cause to extend the deadline to appeal the decision to July 22, 2022, claimant filed his hearing request on decision # 145556 on August 4, 2022, and therefore failed to file his request for hearing within a seven-day "reasonable time" after the circumstances that prevented a timely filing ended.

Claimant established good cause to extend the deadline to appeal because decision # 145556 contained a notice of claimant's right to appeal that was constitutionally defective. The language of decision # 145556 was insufficient to satisfy the requirements of due process under the 14th Amendment to the United States Constitution. *See* U.S. Const. amend. XIV, § 1 ("[N]or shall any State deprive any person of life, liberty, or property, without due process of law[.]"). This is because decision # 145556 did not advise that if claimant had previously received benefits, that he may then have an overpayment that he must repay. Decision # 145556 also failed to provide adequate notice of the potential overpayment amount claimant would face if decision # 145556 became final. Both that decision # 145556 could result in an overpayment claimant must repay and the potential overpayment amount claimant would face was information needed for claimant to make a fully informed decision as to whether to appeal.

In order for claimant to have meaningfully understood decision # 145556, due process required the Department to include in the determination an advisement that if claimant had previously received benefits, he may then have an overpayment that he must repay, and an approximate amount of the overpayment the Department would seek to recover. Because the Department did not notify claimant of these critical facts, claimant was unable to make an informed decision as to "whether to spend the time and resources challenging the decision." *Casillas v. Gerstenfeld*, No. 22CV18836 (Mult. Co. Cir. Ct. Apr. 5, 2024) Letter Opinion on Cross Motions for Summary Judgment at 11. This was the conclusion reached by the Court in *Casillas* in its alternative legal conclusion determining that the Department's system of separating eligibility decisions from overpayment decisions would be unconstitutional if it was still in place as to the plaintiffs in that case. *Casillas* Letter Opinion at 10-11; *See also generally Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

The failure of decision # 145556 to provide claimant with due process constituted a factor beyond claimant's reasonable control that made his failure to file a timely request for hearing an excusable mistake. However, upon receipt of the overpayment decision, decision # 104257, the deficiencies inherent in decision # 145556 were cured and the factor that prevented a timely filing ended. This is because upon receipt of decision # 104257, claimant learned that the Department was authorized to require claimant to repay the entire \$610 combined overpayment amount, or deduct the overpayment from future benefits payable. Exhibit 3 at 1-2. Claimant also was put on notice that if he had not had a hearing on the issue that caused the overpayment, decision # 145556, he must specifically request hearing on decision # 145556. Exhibit 3 at 2 ("If you have not had a hearing on the issue that caused the overpayment, and you wish to do so now, you must specifically request a hearing on that earlier administrative decision.").

Claimant likely received decision # 104257 no later than July 22, 2022. The record shows that claimant received decision # 104257 after it was mailed. First class domestic mail sent through the U.S. Postal Service is estimated to take 1-5 business days after mailing to be delivered.² Accordingly, claimant likely received decision # 104257 no later than July 22, 2022, which was five business days after July 15, 2022. Upon claimant's receipt of decision # 104257 and the ending of the factor preventing a timely appeal, claimant had seven days to file his hearing request on decision # 145556 to meet the extended filing deadline. Because claimant filed his late request for hearing on decision # 145556 on August 4, 2022, claimant failed to file within a seven-day "reasonable time" of July 22, 2022.

Accordingly, claimant failed to file his late request for hearing within a reasonable time, claimant's late request for hearing on decision # 145556 is dismissed, and decision # 145556's conclusion that claimant was denied benefits for the week at issue remains undisturbed.

Overpayment. ORS 657.310(1) provides that an individual who received benefits to which the individual was not entitled is liable to either repay the benefits or have the amount of the benefits deducted from any future benefits otherwise payable to the individual under ORS chapter 657. That provision applies if the benefits were received because the individual made or caused to be made a false statement or misrepresentation of a material fact, or failed to disclose a material fact, regardless of the individual's knowledge or intent. *Id.* ORS 657.315(1) provides, in relevant part, that an individual who has been overpaid benefits because of an error not caused by the individual's false statement, misrepresentation of a material fact or failure to disclose a material fact, or because an initial decision to pay benefits is subsequently reversed by a decision finding the individual is not eligible for the benefits, is liable to have the amount deducted from any future benefits otherwise payable to the individual under this chapter for any week or weeks within five years following the week in which the decision establishing the erroneous payment became final.

ORS 657.267 provides:

(1) ***An authorized representative shall promptly examine each claim*** for waiting week credit or for benefits ***and, on the basis of the facts available, make a decision to allow or deny the claim.*** Information furnished by the claimant, the employer or the employer's agents on forms provided by the Employment Department pursuant to the authorized representative's examination must be accompanied by a signed statement that such information is true and correct to the best of the individual's knowledge. ***Notice of the decision need not be given to the claimant if the claim is allowed*** but, if the claim is denied, written notice must be given to the claimant. If the claim is denied, the written notice must include a statement of the reasons for denial, and if the claim is denied under any provision of ORS 657.176, the notice must also set forth the specific material facts obtained from the employer and the employer's agents that are used by the authorized representative to support the reasons of the denial. The written notice must state the reasons for the decision.

² EAB has taken notice of this fact, which is a generally cognizable fact. OAR 471-041-0090(1) (May 13, 2019). A copy of the information is available to the parties at https://faq.usps.com/s/article/Delayed-Mail-and-Packages#check_mail_delivery_standards. 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) If the claim is denied under any provision of ORS 657.176, written notice of the decision must be given to the employing unit, or to the agent of the employing unit, that, in the opinion of the Director of the Employment Department, is most directly involved with the facts and circumstances relating to the disqualification.

(3) Notice of a decision that was wholly or partially based on information filed with the director in writing within 10 days after the notice provided for in ORS 657.265 must be given to any employing unit or agent of the employing unit that filed the information.

(4) *If a decision to allow payment made pursuant to this section does not require notice, that decision may be amended by an authorized representative.* The amendment must be made by written notice informing the recipient of the right of appeal pursuant to ORS 657.269. ***The amendment must be issued within one year of the original decision to allow payment, except in cases of alleged willful misrepresentation or fraud.*** A decision requiring notice, made pursuant to this section, may be amended unless it has become a final decision under ORS 657.269.

(Emphasis added.)

Order No. 24-UI-254938 concluded that claimant was overpaid benefits for the week at issue and is liable to have the overpayment deducted from future benefits otherwise payable. Order No. 24-UI-254938 at 5-8. However, while claimant was overpaid benefits for the week at issue, the Department was not authorized to amend the original decision allowing payment of benefits for that week because they were paid more than a year prior to the issuance of the July 15, 2022 overpayment decision in this case, decision # 104257.

The Department made its original decision under ORS 657.267(1) to allow payment of benefits for the week at issue by paying the benefits for the week on January 19, 2021. Pursuant to ORS 657.267(1), except in cases of willful misrepresentation or fraud, the Department had one year to amend the decision to allow payment.

On July 15, 2022, the Department issued the overpayment decision in this case, decision # 104257, concluding that claimant was not entitled to the benefits he received for the week at issue. Claimant's case is not one of willful misrepresentation or fraud, and the Department was subject to the one-year limitation on amending its original decision to allow payment imposed by ORS 657.267(4). Accordingly, the Department lacked authority to amend the original decision that allowed the payment of benefits and, in turn, to assess an overpayment of benefits for the week at issue, as benefits for that week was paid more than one year prior to the issuance of the overpayment decision. Claimant therefore is not liable to repay the overpaid PEUC or FPUC benefits for the week at issue.

DECISION: Order No. 24-UI-254921 is affirmed. Order No. 24-UI-254938 is reversed, as outlined above.

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

DATE of Service: July 15, 2024

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.

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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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.