

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0498

Request for Hearing Allowed
Reversed & Remanded

PROCEDURAL HISTORY AND FINDINGS OF FACT: On March 24, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant received unemployment insurance benefits to which she was not entitled, and assessing an overpayment of \$2,226 in regular unemployment insurance (regular UI) and Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay to the Department (decision # 124415). On March 30, 2022, claimant timely requested a hearing, but the Department failed to process the hearing request. On April 13, 2022, decision # 124415 became final without the Department having processed claimant's request for hearing. On May 27, 2022, claimant filed what was considered as a late request for hearing on decision # 124415.

On May 24, 2024, ALJ Lucas conducted a hearing, and on May 31, 2024, issued Order No. 24-UI-255448, allowing claimant's March 30, 2022, request for hearing as timely filed, and modifying decision # 124415 on the merits by concluding that claimant was liable for an overpayment of \$442 in regular UI benefits and \$300 in FPUC benefits. On June 10, 2024, claimant filed an application for review 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 information was relevant and material to EAB's determination in this matter.¹ 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 to the extent it was based on the record.

The parties may offer new information, such as the new information contained in claimant's written argument, into evidence at the remand hearing. At that time, it will be determined if the new information

¹ The new information contained in claimant's written argument appeared to be primarily relevant to claimant's appeal of a related matter (UI Case No. 2022-UI-69159), regarding the underlying denial of benefits which led to the overpayment in this matter. The hearing on that matter, to be consolidated with this matter on remand (as discussed below), will allow claimant the opportunity to offer this information into evidence.

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 considered the entire hearing record. EAB agrees with the portion of Order No. 24-UI-255448 allowing claimant's request for hearing as timely. Pursuant to ORS 657.275(2), that portion of Order No. 24-UI-255448 is **adopted**.

CONCLUSIONS AND REASONS: Order No. 24-UI-255448 is set aside and this matter remanded for further development of the record.

The order under review concluded that claimant is liable to repay overpaid benefits totaling \$442 in regular UI benefits and \$300 in FPUC benefits. Order No. 24-UI-255448 at 11–12. While the record as developed shows that claimant was overpaid these amounts, it also suggests that both the regular UI and FPUC overpayment balances have been waived. At hearing, the Department's witness testified that "a federal waiver was allowed... for the \$900.00 that was issued on 4/14/22." Transcript at 13. This sum corresponds with the amount of overpaid FPUC benefits that the Department had initially assessed. The Department's records support this inference. Similarly, the Department's records suggest that the Department waived repayment of the full balance of \$1,326 in overpaid regular UI benefits in May 2024.

If the entirety of the overpayment at issue in this matter has been waived, then this matter is moot, as no further relief could be available to claimant. On remand, the ALJ should inquire as to whether any portion of the overpayment balance (including both state and federal benefits) remains, or if the entirety of the overpayment has been waived. If the record on remand shows the overpayment has been waived, claimant's request for hearing on this matter may be subject to dismissal under OAR 471-040-0035(2) (August 1, 2004).

Additionally, the Department's records show that after failing to appear at a hearing on the underlying administrative decision (UI Case No. 2022-UI-69159) which gave rise to the overpayment in this matter, claimant filed a request to reopen that hearing, and that the request is currently pending with the Office of Administrative Hearings (OAH). On remand, OAH should consolidate both matters, as the outcome in the underlying case may bear on whether the overpayment in this matter was properly assessed or whether the matters are moot.

DECISION: Order No. 24-UI-255448 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: July 16, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-255448 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

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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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