EO: 200
BYE: 202214

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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MC 010.05

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0724

Order No. 24-UI-268300 Affirmed ~ Late Request for Hearing Dismissed
Order No 24-UI-268299 Reversed ~ Late Request for Hearing Allowed, Merits Hearing Required
Orders No. 24-UI-268301 and 24-UI-268302 ~ Reversed & Remanded

PROCEDURAL HISTORY: On December 29, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant failed to actively seek work from September 12 through 18, 2021 (week 37-21) and was ineligible for benefits for that week (decision # 152549). Also on December 29, 2021, the Department served notice of an administrative decision concluding that claimant failed to actively seek work from September 26 through November 13, 2021 (weeks 39-21 through 45-21) and was ineligible for benefits for those weeks (decision # 152726). On January 18, 2022, decisions # 152549 and 152726 became final without claimant having filed requests for hearing.

On July 12, 2022, the Department served notice of an administrative decision concluding that claimant received $659 in regular unemployment insurance (regular UI) and $300 in Federal Pandemic Unemployment Compensation (FPUC) benefits for the week of August 15 through 21, 2021 (week 33-21) to which he was not entitled and must repay (decision # 115348). On July 13, 2022, the Department served notice of an administrative decision based on decision # 152726, concluding that claimant had received $2,514 in regular UI benefits for weeks 39-21 through 45-21 to which he was not entitled and must repay (decision # 93655). On July 25, 2022, claimant filed late requests for hearing on decisions # 152549 and 152726 and timely requests for hearing on decisions # 115348 and 93655.

On September 25, 2024, ALJ Monroe conducted a hearing on decisions # 152549 and 152726 and a hearing on decisions # 115348 and 93655. On October 3, 2024, ALJ Monroe issued Orders No. 24-UI-268300 and 24-UI-268299, denying claimant's late requests for hearing on decisions # 152549 and 152726, and leaving those decisions undisturbed. Also on October 3, 2024, ALJ Monroe issued Orders No. 24-UI-268301 and 24-UI-268302, affirming decisions # 115348 and 93655.[1] On October 15, 2024,

[1] Order No. 24-UI-268301 stated that decision # 115348 was affirmed, but nevertheless concluded that claimant was overpaid $659 in regular UI benefits and $600 in FPUC benefits for week 33-21. Order No. 24-UI-268301 at 2, 5. This appears to be error, as the record shows that the assessed overpayment of FPUC benefits for week 33-21 was $300, not $600. *See* Order No. 24-UI-268301, Transcript at 12. As such, it is presumed that Order No. 24-UI-268301 intended to affirm the assessment of $659 in regular UI benefits and $300 in FPUC benefits for week 33-21.

claimant filed applications for review of Orders No. 24-UI-268300, 24-UI-268299, 24-UI-268301, and 24-UI-268302 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB combined its review of Orders No. 24-UI-268300, 24-UI-268299, 24-UI-268301, and 24-UI-268302. For case-tracking purposes, this decision is being issued in quadruplicate (EAB Decisions 2024-EAB-0727, 2024-EAB-0726, 2024-EAB-0725, and 2024-EAB-0724).

FINDINGS OF FACT: (1) On May 11, 2021, claimant filed an initial claim for benefits. The Department determined that claimant's weekly benefit amount was $659. Claimant claimed benefits for the weeks of August 15 through 21, 2021 (week 33-21), September 12 through 18, 2021 (week 37-21), and September 26 through November 13, 2021 (weeks 39-21 through 45-21). The Department paid claimant a total of $3,173 in regular UI benefits for weeks 33-21 and 39-21 through 45-21. The Department paid claimant $300 in FPUC benefits for week 33-21. The Department did not pay claimant benefits for week 37-21, concluding that claimant failed to file a timely claim for benefits for that week.[2]

(2) On December 29, 2021, the Department mailed an administrative decision to claimant's address on file with the Department, concluding that claimant failed to actively seek work for week 33-21 and was ineligible for benefits for that week (decision # 152349). Order No. 24-UI-268301, Exhibit 1 at 1. Decision # 152349 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 18, 2022." Order No. 24-UI-268301, Exhibit 1 at 2. Decision # 152349 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." Order No. 24-UI-268301, Exhibit 1 at 2 (emphasis in original).

(3) Also on December 29, 2021, the Department mailed decision # 152549 to claimant's address on file with the Department, concluding that claimant was benefits for week 37-21 because he failed to actively seek work for that week. Decision # 152549 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 18, 2022." Order No. 24-UI-268300, Exhibit 1 at 2. Decision # 152549 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." Order No. 24-UI-268300, Exhibit 1 at 2 (emphasis in original).

(4) Also on December 29, 2021, the Department mailed decision # 152726 to claimant's address on file with the Department, concluding that claimant was denied claimant benefits for weeks 39-21 through 45-21 because he failed to actively seek work those weeks. Decision # 152726 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 18, 2022." Order No. 24-UI-268299, Exhibit 1 at 2. Decision # 152726 also stated, "**IMPORTANT**: If you were paid benefits for any week covered by this decision, you may have to pay

[2] EAB has taken notice of this information, which is contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). Any party that objects to our taking notice of this information must submit a written objection to EAB explaining why they object, within ten days of EAB mailing this decision. OAR 471-041-0090(2). Unless the objection is sustained, the noticed information will remain in the record.

us back. You'll get information about how much you owe and how to pay us back, after the appeal period." Order No. 24-UI-268299, Exhibit 1 at 2 (emphasis in original).

(5) On or before January 18, 2022, claimant received decisions # 152549 and 152726, disagreed with both decisions, and attempted to contact the Department to discuss his concerns. However, claimant was unable to reach the Department due to long hold times on the phone and ultimately decided to "give up" on pursuing the matters further. Order No. 24-UI-268299, Transcript at 16. When claimant received decisions # 152549 and 152726, he "didn't know that [he] had to appeal" the administrative decisions to contest them. Order No. 24-UI-268299, Transcript at 11. Additionally, claimant did not realize at the time that the two decision's denials of benefits would result in overpayments that he would have to repay. On January 18, 2022, decisions # 152549 and 152726 became final without claimant having filed requests for hearing. Decision # 152349, which denied claimant benefits for week 33-21, also became final at that time without claimant having filed a request for hearing.

(6) On July 12, 2022, the Department issued decision # 115348 based on decision # 152349, concluding that claimant had been overpaid benefits for week 33-21. On July 13, 2022, the Department issued decision # 93655 based on decision # 152726, concluding that claimant had been overpaid benefits for weeks 39-21 through 45-21. These decisions found that decisions # 152349 and 152726 that caused the overpayments had become final without claimant having filed timely requests for hearing. The Department did not assess an overpayment for week 37-21 because claimant had not been paid benefits for that week.

(7) Claimant received decisions # 152349 and 93655, and again attempted to contact the Department for help. On July 22, 2022, claimant spoke on the phone to a Department representative who advised claimant that he could file requests for hearings on the overpayment decisions and provided claimant with instructions on how to do so. On July 25, 2022, claimant spoke to the Department again, and was again told how to file requests for hearing on those decisions.[3]

(8) After having spoken to the Department, claimant realized that he would have to appeal the overpayment decisions, as well as the underlying decisions that denied benefits, to contest the overpayments the Department had assessed. On July 25, 2022,[4] claimant filed timely requests for hearing on decisions # 152349 and 93655, and late requests for hearing on decisions # 152549 and 152726.

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[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 a written objection to EAB in writing, explaining why they object, within ten days of EAB mailing this decision. OAR 471-041-0090(2). Unless the objection is sustained, the noticed facts will remain in the record.

[4] OAR 471-040-0005(4)(b) (July 15, 2018) states, "When filed by mail, the date of filing [of a request for hearing] shall be the postmarked date affixed by the United States Postal Service or, in the absence of a postmarked date, the most probable date of mailing." The postmark on the envelope in which claimant mailed their requests for hearing is illegible. *See* Order No. 24-UI-268299, Exhibit 2 at 12. However, claimant's handwritten statement enclosed with the requests for hearing is dated July 25, 2022, and the Department stamped the requests for hearing as having been received on July 29, 2024. Exhibit 2 at 3, 2. As the Department would have been unlikely to receive a document on the same date it was mailed, and as claimant's handwritten date is the only other possible date of filing listed on the request for hearing, July 25, 2022 is the most probable date of mailing.

CONCLUSIONS AND REASONS: Order No. 24-UI-268300 is affirmed, and claimant's late request for hearing on decision # 152549 is dismissed. Order No. 24-UI-268299 is reversed. Claimant's late request for hearing on decision # 152726 is allowed, and claimant is entitled to a hearing on the merits of that decision. Orders No. 24-UI-268301 and 24-UI-268302 are reversed, and those matters remanded for further proceedings.

Late Requests for Hearing on Decisions # 152549 and 152726. 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. Under OAR 471-040-0010(1)(b)(B), "good cause" does not include "Not understanding the implications of a decision or notice when it is received."

The requests for hearing on decisions # 152549 and 152726 were due by January 18, 2022. Because claimant did not file his requests for hearing on those decisions until July 25, 2022, the requests were late. The record shows that claimant failed to file timely requests for hearing after having received those two decisions because he did not understand that he had to appeal them to contest the conclusions therein, did not understand that the denials of benefits would result in the assessment of overpayments, and ultimately stopped trying to contact the Department to address the matters because of the long hold times on the phone.

Orders No. 24-UI-268300 and 24-UI-268299 concluded that this did not constitute good cause for failing to file timely requests for hearing on decisions # 152549 and 152726 because "claimant's initial misunderstanding of the decision[s]" that led to his failure to file timely requests for hearing was explicitly excluded from the definition of "good cause" under OAR 471-471-040-0010(1)(b)(B). Order No. 24-UI-268300 at 4; Order No. 24-UI-268299 at 4. The record supports this conclusion as to decision # 152549. However, it does not support this conclusion as to decision # 152726 because the language in decision # 152726, which failed to provide adequate notice of the decision's implications on claimant's right to benefits, was insufficient to satisfy due process requirements under the 14th Amendment to the United States Constitution.[5]

As for decision # 152549, while claimant's apparent confusion as to what was required to contest the outcome of the decision was understandable, claimant did not show that factors beyond his reasonable control prevented him from filing a timely request for hearing on that decision. Further, while claimant's misunderstanding was likely the result of a mistake on his part, it was not an "excusable mistake" within the meaning of the administrative rules because it did not, for example, raise a due process issue, and was not the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply. Claimant therefore failed to show good cause for his late request for hearing on decision # 152549.

[5] U.S. Const. amend. XIV, §1 provides, in relevant part, "[N]or shall any State deprive any person of . . . property, without due process of law[.]"

As for decision # 152726, however, as noted above, the language in decision # 152726 was insufficient to satisfy due process requirements under the 14th Amendment to the United States Constitution. Thus, to the extent that the application of OAR 471-040-0010(1)(b)(B) otherwise supports a finding that claimant did not have good cause to file a late request for hearing on that decision, the conflict between the administrative rule and the United States Constitution must be resolved in favor of the Constitution.[6] OAR 471-040-0010(1)(b)(B) therefore does not bar a finding of good cause in regard to decision # 152726.[7]

While decision # 152726 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 approximate amount of the overpayment that would result from its determination of ineligibility. In order for claimant to have meaningfully understood the implications of decision # 152726, due process required the Department to inform claimant of those implications resulting from 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 approximate amount of the overpayment that would result from decision # 152726's denial of benefits, claimant was unable to make an informed decision as to "whether to spend the time and resources challenging the decision." *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). This failure to provide claimant with due process constituted a factor beyond his reasonable control, and claimant therefore had good cause for his late request for hearing on decision # 152726.

Further, claimant filed the late request for hearing within a reasonable time of when the factors that prevented the timely filing ceased. The record does not conclusively show when claimant received decision # 152726. However, it can be reasonably inferred from the record that claimant first became aware of the need to file requests for hearing on both the administrative decisions that created the overpayments *and* the underlying decisions that determined claimant ineligible for benefits for the weeks at issue when he spoke to a Department representative on July 22, 2022, who explained to claimant what he needed to do. Thus, the factors which prevented claimant from timely filing the late request for hearing on decision # 152726 ceased on that date. Claimant filed his late request for hearing on decision # 152726 three days later, on July 25, 2022, which was within the seven-day "reasonable time" period under OAR 471-040-0010. Therefore, claimant's late request for hearing on decision # 152726 is allowed, and claimant is entitled to a hearing on the merits of that decision.

Late Request for Hearing on Decision # 152349. For reasons that are not clear from the record, claimant's request for hearing on decision # 152349 was never scheduled for a hearing along with the other four administrative decisions in these cases. As such, testimony on claimant's failure to file a timely request for hearing on decision # 152349 was not taken, and an order determining whether to allow claimant's late request for hearing on that decision has not been issued. EAB therefore lacks jurisdiction to rule on either claimant's late request for hearing on decision # 152349 or the merits of that decision. On remand, OAH should schedule a hearing on decision # 152349 to determine whether claimant's late request for hearing on that decision should be allowed and, if so, the merits of that

[6] *See* U.S. Const., art. 6, cl. 2.

[7] Conversely, there is no due process concern with decision # 152549, as no overpayment resulted from its determination of ineligibility, and the decision therefore sufficiently notified claimant of the implications of its determination.

decision. Given that decision # 152349 also led to the assessment of an overpayment, the determination of whether to allow the late request for hearing on that decision should be consistent with EAB's reasoning regarding the late request for hearing on decision # 152726, above, including the application of principles of due process. For the sake of administrative efficiency, OAH should combine the hearing on decision # 152349 with the remand hearing on decision # 152726.

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.*

Decisions # 115348 and 93655 assessed claimant overpayments for benefits paid during weeks 33-21 and 39-21 through 45-21 based on decisions # 152349 and 152726, which determined the denials of benefits that caused the overpayments, had become final without claimant having filed timely requests for hearing. However, claimant's late request for hearing on decision # 152726, as discussed above, is allowed, entitling claimant to a hearing on the merits of that decision. Furthermore, it will be determined on remand whether to allow the late request for hearing on decision # 152349. As such, at least one, and possibly both, of these two decisions will be heard on the merits, and their determinations of ineligibility are no longer final as a matter of law. Whether claimant was actually overpaid benefits for any of the weeks at issue is therefore still a question that must be resolved on remand.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division,* 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary for a determination of whether claimant actively sought work during weeks 39-21 through 45-21, and whether claimant was overpaid benefits for the weeks at issue, Orders No. 24-UI-268299, 24-UI-268301, and 24-UI-268302 are reversed, and these matters are remanded.

DECISION: Order No. 24-UI-268300 is affirmed. Orders No. 24-UI-268299, 24-UI-268301, and 24-UI-268302 are set aside, and those matters remanded for further proceedings consistent with this order.

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

DATE of Service: <u>November 1, 2024</u>

NOTE: You may appeal EAB Decision 2024-EAB-0727 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.

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 24-UI-268299, 24-UI-268301, and 24-UI-268302 or return the related matters to EAB. Only timely applications for review of the subsequent orders will cause those matters 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 – 本判决会影响您的失业救济金。 如果您不明白本判决， 请立即联系就业上诉委员会。 如果您不同意此判决，您可以按照该判决结尾所写的说明，向俄勒冈州上诉法院提出司法复审申请。

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 ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

Arabic

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فورا، 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 دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
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