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

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# EMPLOYMENT APPEALS BOARD DECISION
# 2024-EAB-0773

*Order No. 24-UI-271408 ~ Reversed*
*Late Request for Hearing Allowed ~ Merits Hearing Required*
*Order No. 24-UI-271423 ~ Reversed & Remanded*

**PROCEDURAL HISTORY:** On May 21, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work during the weeks of March 21, 2021 through April 10, 2021 (weeks 12-21 through 14-21) and was therefore ineligible to receive unemployment insurance benefits for those weeks (decision # 92922). On June 10, 2021, decision # 92922 became final without claimant having filed a request for hearing. On March 31, 2022, the Department served notice of an administrative decision, based in part on decision # 92922, concluding that claimant received benefits to which she was not entitled and assessing an overpayment of $1,152 in regular unemployment insurance (regular UI) benefits and $900 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay to the Department (decision # 121548). On April 20, 2022, decision # 121548 became final without claimant having filed a request for hearing. On September 9, 2022, claimant filed a late request for hearing on each decision. On October 22, 2024, ALJ Frank conducted hearings on both matters, and on October 30, 2024 issued Order No. 24-UI-271408, dismissing claimant's request for hearing on decision # 92922 as late without good cause; and Order No. 24-UI-271423, allowing claimant's late request for hearing on decision # 121548 and affirming that decision on the merits.[1] On November 2, 2024, claimant filed applications for review of Orders No. 24-UI-271408 and 24-UI-271423 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 24-UI-271408 and 24-UI-271423. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2024-EAB-0773 and 2024-EAB-0774).

EAB considered the entire consolidated hearing record. EAB agrees with the portion of Order No. 24-UI-271423 allowing claimant's late request for hearing on decision # 121548. Pursuant to ORS 657.275(2), that portion of Order No. 24-UI-271423 is **adopted.**

[1] The Department only participated in the hearing on decision # 121548.

**WRITTEN ARGUMENT:** EAB considered claimant's argument in reaching this decision.

**FINDINGS OF FACT:** (1) Decision # 92922, mailed to claimant's address of record on file with the Department on May 21, 2021, 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 June 10, 2021." Order No. 24-UI-271408 Exhibit 1 at 2. Decision # 92922 also stated, "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-271408 Exhibit 1 at 2. Claimant received decision # 92922 shortly after it was mailed.

(2) Decision # 121548, mailed to claimant's address of record on file with the Department on March 31, 2022, stated, "[Y]ou have the right to appeal this decision. Any appeal from this decision must be filed on or before April 20, 2022, to be timely." Order No. 24-UI-271423 Exhibit 1 at 3. Claimant received decision # 121548 shortly after it was mailed.

(3) On April 12, 2022, claimant filed a request to waive recovery of the overpayment assessed in decision # 121548. On April 19, 2022, claimant spoke with a Department representative who advised that the waiver had been granted as to FPUC benefits but that they did not find a request to waive recovery of regular UI benefits on file. The representative's notes of the conversation stated, in relevant part, "Her appeal/wavier is due 4/20/22[.] Let clmnt know late waiver is better than no waiver and I will have waiver mailed out[.]"[2] From this conversation, claimant mistakenly believed that she could not pursue both a waiver and an appeal simultaneously. Claimant again sent a regular UI overpayment waiver request.

(4) On August 30, 2022, the Department issued an amended administrative decision denying claimant's request to waive recovery of the FPUC overpayment. On September 6, 2022, claimant spoke with a Department representative who explained the FPUC waiver denial decision and advised that they had not received her regular UI overpayment waiver request.

(5) On September 9, 2022, claimant again spoke with a Department representative and inquired about her ability to appeal decision # 121548. That day, claimant filed a late request for hearing that was construed to apply to both decisions # 92922 and 121548.

(6) On August 19, 2024, the Department issued decision # L0005590731, granting claimant's request to waive recovery of $1,152 of overpaid regular UI benefits and denying claimant's request to waive recovery of $900 of overpaid FPUC benefits. Claimant filed a request for hearing. After the hearing, ALJ Frank issued Order No. 24-UI-271427, which modified decision # L0005590731 by additionally granting the FPUC waiver.[3]

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[2] EAB has taken notice of these facts which are 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 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 facts will remain in the record.

[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

**CONCLUSIONS AND REASONS:** Claimant's late request for hearing on decision # 92922 is allowed and a hearing on the merits of that decision is required. Order No. 24-UI-271423 is set aside and the matter remanded for further proceedings.

**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 # 92922 was due by June 10, 2021. Because claimant's request for hearing was filed on September 9, 2022, the request was late. Claimant testified that she had attempted to file a request for hearing on decision # 92922 prior to the September 9, 2022, request, but could not recall the date or other specifics of any earlier request. Order No. 24-UI-271408, Audio Record at 5:35, 7:40, 8:55. Further, claimant's testimony suggested that she may have been referring to a request for waiver of recovery of overpayment rather than a request for hearing on decision # 92922 when discussing possible earlier filings. The record therefore does not show that, more likely than not, claimant filed or attempted to file a request for hearing on decision # 92922 by the June 10, 2021, deadline.

The order under review concluded that claimant failed to show that a circumstance beyond her reasonable control or an excusable mistake prevented timely filing of the request for hearing. Order No. 24-UI-271408 at 3. The record does not support this conclusion. Claimant sought waiver or appeal of the overpayment that resulted from decision # 92922 shortly after the overpayment was assessed. Given that claimant promptly took action to address the overpayment by filing a waiver request, it can reasonably be inferred that claimant's decision not to timely request a hearing on decision # 92922 was based, at least in part, on the failure of decision # 92922 to state that the specific consequence of failing to appeal would be liability to repay an overpayment totaling $2,052. Stating simply that claimant "may have to pay [the Department] back" an undisclosed amount of benefits was insufficient to satisfy claimant's right to due process under the Fourteenth Amendment to the United States Constitution by providing enough information for claimant to decide whether she should appeal decision # 92922.[4] Therefore, claimant's mistake in failing to timely request a hearing was excusable, and good cause to extend the filing deadline has been shown.

The record shows that claimant was notified of the specific consequence of failing to appeal decision # 92922 when she received decision # 121548, sometime between March 31, 2022, and April 12, 2022. On April 12, 2022, claimant filed a request to waive recovery of the overpayment. However, claimant testified that she was unaware that she could pursue both a waiver and appeal of the overpayment. Order No. 24-UI-271423 Audio Record at 14:49. It can reasonably be inferred from this that claimant was also

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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 facts will remain in the record.

[4] 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[.]"

unaware of her right to file a late request for hearing on decision # 92922 while pursing the waiver. Claimant was then given inaccurate information about the status of her waiver request on April 19, 2022, leading her to believe that the request was partially granted and partially under consideration. This continued through August 30, 2022, when the Department issued an administrative decision denying claimant's waiver request as to the overpaid FPUC benefits, and through a September 6, 2022, conversation with a Department representative wherein claimant was advised to continue pursuing the waiver. On September 9, 2022, claimant was advised of her right to file a late request for hearing on decision # 121548, which she did that day, and it was construed as also applying to decision # 92922. It was only at this time that the factors that prevented timely filing ended. Because claimant's late request for hearing on decision # 92922 was filed the same day, it was filed within a "reasonable time." Accordingly, claimant's late request for hearing on decision # 92922 is allowed, and a hearing on the merits is required.

**Overpayment.** Order No. 24-UI-271423 concluded that claimant was overpaid $2,052 in combined regular UI and FPUC benefits "[a]s a matter of law" based on the finality of decision # 92922. Order No. 24-UI-271423 at 5. Because claimant's appeal of decision # 92922 is remanded for a hearing on the merits, claimant's entitlement to the benefits at issue in decision # 121548 has yet to be determined. Accordingly, Order No. 24-UI-271423 is also set aside and the matter remanded for a hearing on the merits of decision # 121548.[5]

**DECISION:** Orders No. 24-UI-271408 and 24-UI-271423 are set aside, and these matters remanded for further proceedings consistent with this order.

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

**DATE of Service: November 25, 2024**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Orders No. 24-UI-271408 and 24-UI-271423 or return these matters to EAB. Only a timely application for review of the subsequent order will cause the matter to return to EAB.

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[5] Despite both federal and state waivers having been granted, the Department's records suggest that collection activities continued after the issuance of Order No. 24-UI-271427 for reasons that are not apparent.

# 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.

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