

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0812

Late Applications for Review Dismissed

PROCEDURAL HISTORY: On May 10, 2022, the Oregon Employment Department (the Department) served notice a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was not eligible for PUA benefits effective February 2, 2020. On May 13, 2022, the Department served notice of an administrative decision based partly on the May 10, 2022 PUA determination, concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing an overpayment of \$37,370 in combined PUA, Federal Pandemic Unemployment Compensation (FPUC), and Lost Wages Assistance (LWA) benefits that claimant was required to repay, plus a \$5,380.50 monetary penalty.¹ Claimant filed timely requests for hearing on both decisions. On November 27, 2023, the Office of Administrative Hearings (OAH) served notices of hearings on both decisions scheduled for December 7, 2023. On December 7, 2023, claimant failed to appear at the hearings, and ALJ Enyinnaya issued Orders No. 23-UI-242892 and 23-UI-242893, dismissing claimant’s requests for hearing on the May 10, 2022, PUA determination and the May 13, 2022, overpayment decision due to her failure to appear. On December 27, 2023, Orders No. 23-UI-242892 and 23-UI-242893 became final without claimant having filed requests to reopen the hearings. On February 9, 2024, filed late requests to reopen the hearings.

On May 17, 2024, ALJ Wardlow conducted a hearing on both matters. On May 22, 2024, ALJ Wardlow issued Order No. 24-UI-254849, allowing claimant’s late request to reopen the hearing on the May 10, 2022, PUA determination, and affirming that decision by concluding that claimant was not eligible for PUA benefits for the weeks from March 22, 2020, through September 4, 2021 (weeks 13-20 through 35-21). On May 23, 2024, ALJ Wardlow issued Order No. 24-UI-254882, allowing claimant’s late request to reopen the hearing on the May 13, 2022, overpayment decision, and affirming that decision. On June 11, 2024, Order No. 24-UI-254849 became final without claimant having filed an application for review

¹ The May 13, 2022, overpayment decision stated that claimant received a total of \$42,751 FPUC, PUA, and LWA benefits to which she was not entitled, and separately concluded that claimant was assessed a monetary penalty of “at least 15% but not more than 30% of the amount due[.]”. Order No. 24-UI-254882, Exhibit 4 at 2. However, the schedule of adjustments attached to that decision shows that claimant was assessed a combined overpayment of \$37,370 plus a monetary penalty of \$5,380.50. Order No. 24-UI-254882, Exhibit 4 at 4. As such, it is presumed that the May 13, 2022, overpayment decision assessed claimant a combined total of \$42,750.50, which included both the overpayments and the monetary penalty, and that the figure used in the decision itself was error.

with the Employment Appeals Board (EAB). On June 12, 2024, Order No. 24-UI-254882 became final without claimant having filed an application for review with EAB. On November 22, 2024, claimant filed late applications for review of Orders No. 24-UI-254849 and 24-UI-254882 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 24-UI-254849 and 24-UI-254882. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2024-EAB-0812 and 2024-EAB-0813).

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of claimant’s written statement enclosed with her applications for review, has been marked as EAB Exhibit 1, and provided to the parties with this decision. Any party that objects to EAB taking notice of this information must send their objection to EAB in writing, saying why they object, within ten days of EAB mailing this decision. OAR 471-041-0090(2). Unless EAB receives and agrees with the objection, the exhibit will remain in the record.

FINDINGS OF FACT: (1) Order No. 24-UI-254849, mailed to claimant on May 22, 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-254849 at 11. Order No. 24-UI-254849 also stated on its Certificate of Mailing, “Any appeal from this Order must be filed on or before June 11, 2024, to be timely.”

(2) Order No. 24-UI-254882, mailed to claimant on May 23, 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-254882 at 13. Order No. 24-UI-254882 also stated on its Certificate of Mailing, “Any appeal from this Order must be filed on or before June 12, 2024, to be timely.”

(3) On November 27, 2023, OAH served notices of hearings on the May 10, 2022, PUA determination and the May 13, 2022, overpayment decision, both scheduled for December 7, 2023. Claimant did not receive these notices because they were sent to an address at which she no longer resided. Claimant therefore failed to appear at the hearings, and her requests for hearing were dismissed. Claimant also failed to receive the orders dismissing her requests for hearing, and therefore failed to file timely requests to reopen the hearings.

(4) At the end of the May 17, 2024, hearing, the ALJ held the record open until 5:00 p.m. the following Monday, May 20, 2024, and advised the parties that they should expect her order to be issued “in the next week or so” after the hearing record was closed. Audio Record at 2:22:50.

(5) On May 19, 2024, claimant’s adult daughter suffered serious complications during childbirth and was “placed in a coma for her body to heal.” EAB Exhibit 1 at 1. Claimant travelled from her residence in Oregon to the State of Washington, where her daughter was hospitalized for four months, to spend time with her daughter in the hospital and care for her grandchildren. Claimant also stayed with her daughter in Washington after she was discharged from the hospital to help care for her and her three

children. “[F]or most of that time,” claimant was under “sever[e] emotional distress not knowing if [her] child would be ok or not.” EAB Exhibit 1 at 1.

(6) On or around November 18, 2024, claimant returned home after having spent almost six months out of state with her daughter and grandchildren. At that time, claimant checked her mail and found the orders under review that had been mailed to her in late May 2024. On November 22, 2024, claimant filed late applications for review of the orders.

CONCLUSIONS AND REASONS: Claimant’s late applications for review are dismissed.

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 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 applications for review of Orders No. 24-UI-254849 and 24-UI-254882 were due by June 11, 2024, and June 12, 2024. Because claimant did not file her applications for review until November 22, 2024, the applications for review were late.

Claimant indicated in her statement enclosed with the late applications for review that she failed to file timely applications for review because she had been out of town caring for her daughter and grandchildren from late May 2024 until November 22, 2024. Given the apparently serious nature of claimant’s daughter’s medical condition at the time, claimant’s absence from her home is understandable. Nevertheless, while claimant did not actually receive the orders under review until nearly six months after they were mailed to her, claimant has not shown that she was prevented from filing timely applications for review due to factors or circumstances beyond her reasonable control.

The hearing took place on May 17, 2024, and the orders under review were mailed on May 22 and 23, 2024. It can be reasonably inferred from claimant’s statement enclosed with the applications for review that she had already left for Washington state by the time the orders under review were mailed. Therefore, claimant’s initial failure to receive the orders under review when they were delivered was due to factors or circumstances beyond her reasonable control. However, the applications for review were due by June 11 and 12, 2024, approximately three weeks after claimant left for Washington. Despite her heightened emotional state while her daughter was in the hospital, claimant had reason to expect to receive the ALJ’s orders within a week or so of May 20, 2024.

It stands to reason that sometime during the approximately three weeks after claimant left home, the initial emergency and claimant’s emotional state subsided enough that it was within claimant’s reasonable control to make provisions for the management of the mail she received in Oregon while she was in Washington, such as asking a friend or neighbor to periodically check the mail that had been received in her absence. Likewise, given that claimant knew or had reason to know that the ALJ’s orders

were likely issued in or around the last week of May 2024, it likely was within claimant's reasonable control to contact the Department or OAH to request information about whether the orders under review had been issued, and request that copies of them be sent to her in Washington. Even if it was not within claimant's reasonable control to take any of the above steps within the few weeks after she arrived in Washington, and she therefore had good cause for failing to file timely applications for review, it is reasonable to infer that she could have done so well before her return to Oregon approximately five months later, meaning that her late applications for review were not filed within a reasonable time.

The above inferences are supported by the procedural history of these matters. The record shows that claimant did not timely receive the November 27, 2023, notices of hearings because she was no longer living at the address to which they were sent, causing her to miss those hearings, and for her request for hearing to be dismissed. The record further shows that claimant likely did not receive the December 7, 2023, orders dismissing her requests for hearing due to her failure to appear at the hearings,² and claimant therefore failed to file timely requests to reopen the hearings. Given that claimant twice missed deadlines because she did not receive mail when the documents containing those deadlines were issued, it is reasonable to infer that claimant was aware that missing further deadlines could impede her ability to further pursue appeals on these matters, and that she should therefore make efforts to ensure that she was able to receive the ALJ's orders in these matters well before she returned to Oregon.

For the above reasons, claimant has not shown good cause to extend the deadlines for filing her applications for review from mid-June 2024 to late November 2024, a period of over five months. Claimant's late applications for review therefore are dismissed.

DECISION: The late applications for review filed November 22, 2024 are dismissed. Orders No. 24-UI-254849 and 24-UI-254882 remain undisturbed.

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

DATE of Service: December 5, 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 stated above**. See ORS 657.282. For forms and information, visit <https://www.courts.oregon.gov/courts/appellate/forms/Pages/appeal.aspx> and choose the appropriate form under "File a Petition for Judicial Review." You may also contact the Court of Appeals by telephone at (503) 986-5555, by fax at (503) 986-5560, or by mail at 1163 State Street, Salem, Oregon 97301.

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² Claimant noted in her requests to reopen the hearings, "I filled [*sic*] a request for hearing according to the paperwork I received on or about February 3, 2024[.]" Order No. 24-UI-254849, Exhibit 5 at 2. The record also shows that claimant did not learn that she had missed the December 7, 2023, hearings until she contacted the Department on February 9, 2024, and was informed as much by a Department representative. This, combined with claimant's statement in the reopen requests and the fact that she was homeless in December 2023, suggests that claimant never received the December 7, 2023, dismissal orders.

you are unable to complete the survey online and wish to have 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

ទោរទៅ – តម្រូវការនេះមិនមែនជាភារកិច្ចរបស់យើងទេ បើសិនជាអ្នកមិនយល់អំពីសេចក្តីសម្រេចនេះ សូមទាក់ទងគណៈកម្មការឧទ្ធរណ៍ការងារភ្លាមៗ។ ប្រសិនបើលោកអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រេចនេះទេ លោកអ្នកអាចដាក់ពាក្យប្តឹងសុំឲ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

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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