

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0836

Order No. 24-UI-273857 ~ Affirmed
Late Request for Hearing Dismissed
Order No. 24-UI-273933 ~ Reversed & Remanded

PROCEDURAL HISTORY: On February 23, 2022, the Oregon Employment Department (The Department) served notice of an administrative decision denying claimant's October 19, 2021, request to waive recovery of overpaid federal unemployment insurance benefits (decision # 143603). On March 15, 2022, decision # 143603 became final without claimant having filed a request for hearing. On April 27, 2022, the Department served notice of an administrative decision denying claimant's April 26, 2022, request to waive recovery of overpaid federal unemployment insurance benefits (decision # 151617). On May 5, 2022, claimant filed a late request for hearing on decision # 143603 and a timely request for hearing on decision # 151617. On November 12, 2024, ALJ Lucas conducted hearings on both matters. On November 19, 2024, ALJ Lucas issued Order No. 24-UI-273857, dismissing claimant's late request for hearing on decision # 143603 and leaving that decision undisturbed. On November 20, 2024, ALJ Lucas issued Order No. 24-UI-273933, affirming decision # 151617 on the merits.

On December 9, 2024, claimant filed timely applications for review of Orders No. 24-UI-273857 and 24-UI-273933 with the Employment Appeals Board (EAB). Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 24-UI-273857 and 24-UI-273933. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2024-EAB-0835 and 2024-EAB-0836).

FINDINGS OF FACT: (1) On August 23, 2021, the Department issued an administrative decision concluding that claimant was not eligible for Pandemic Unemployment Assistance (PUA) benefits for the weeks of May 3 through 9, 2020, May 24 through July 11, 2020, and July 19 through September 26, 2020 (weeks 19-20, 22-20 through 28-20, and 30-20 through 39-20) due to having received remuneration exceeding his weekly benefit amount (WBA) for those weeks. The administrative decision also concluded that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessed overpayments of \$3,690 in PUA, \$5,400 in Federal Pandemic Unemployment Compensation (FPUC), and \$1,800 in Lost Wages Assistance (LWA) benefits that claimant was required to repay, and a \$2,727 monetary penalty.

(2) On September 13, 2021, the August 23, 2021, administrative decision became final without claimant having filed a request for hearing.

(3) On October 19, 2021, claimant filed a request to waive recovery of the overpayment assessed by the August 23, 2021, administrative decision.

(4) On November 1, 2021, the Department issued an Amended Notice of Determination for PUA, concluding that claimant was ineligible for PUA benefits effective March 22, 2020, because he was eligible for regular unemployment insurance (regular UI) benefits. Claimant filed a timely request for hearing. On May 16, 2024, Order No. 24-UI-254339 was issued, concluding that claimant was ineligible for PUA benefits for weeks 19-20, 22-20 through 26-20, 28-20, and 36-20 through 39-20 because he received remuneration in excess of his WBA for those weeks, and was ineligible for PUA benefits for the weeks of June 28, 2020, through January 30, 2021 (weeks 27-20 through 04-21) because he was eligible for regular UI benefits for those weeks. Order No. 24-UI-254339, Exhibit 7 at 2-5. Order No. 24-UI-254339 became final without claimant having filed an application for review with EAB.

(5) On February 23, 2022, the Department issued decision # 143603, denying claimant's October 19, 2021, waiver request. Claimant received decision # 143603 shortly after it was mailed. Claimant did not file a request for hearing by the March 15, 2022, deadline because he feared it would interfere with his then-pending appeal of the November 1, 2021, PUA determination.

(6) On April 26, 2022, claimant filed another request to waive recovery of the overpayment assessed in the August 23, 2021, administrative decision. On April 27, 2022, the Department issued decision # 151617, denying the request.

(7) On May 5, 2022, claimant filed requests for hearing that were construed to apply to the August 23, 2021, administrative decision and decisions # 143603 and 151617. The request was timely only as to decision # 151617.

(8) On January 30, 2024, the Office of Administrative Hearings (OAH) issued Order No. 24-UI-246815, dismissing claimant's late request for hearing on the August 23, 2021, administrative decision. Claimant filed a timely application for review with EAB. On March 22, 2024, EAB issued EAB Decision 2024-EAB-0200, affirming Order No. 24-UI-246815.

(9) On January 9, 2025, EAB issued EAB Decision 2024-EAB-0200-R, reconsidering EAB Decision 2024-EAB-0200 on EAB's own motion, reversing Order No. 24-UI-246815, allowing claimant's late request for hearing on the August 23, 2021, administrative decision, and remanding the matter for a hearing on the merits of that decision.

CONCLUSIONS AND REASONS: Claimant's late request for hearing on decision # 143603 is dismissed. Order No. 24-UI-273933 is reversed and the matter remanded for further proceedings.

Late Request for Hearing on Decision # 143603. 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 # 143603 was due by March 15, 2022. Because claimant filed his request for hearing on May 5, 2022, it was late. Claimant testified that he received decision # 143603 after it was mailed, and did not assert that there was any delay in its receipt. Audio Record at 20:55. Claimant explained that his hearing request on decision # 143603 was not filed by the March 15, 2022, deadline because, "I had made an appeal request, I was waiting for an appeal hearing, and. . . I mistakenly believed that. . . things would not continue to move forward with the. . . appeal hearing[.]" Order No. 24-UI-273857, Audio Record at 26:57. It can reasonably be inferred that claimant was referring to his request for hearing on the November 1, 2021, PUA determination.

While claimant's belief that filing a request for hearing on decision # 143603 would negatively impact his pending appeal regarding eligibility for PUA benefits was, as he admitted, a mistake, it was not an "excusable" mistake within the meaning of the administrative rules. This is 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. The record does not otherwise suggest that claimant was prevented from timely filing a request for hearing due to circumstances beyond his reasonable control. Accordingly, claimant has not shown good cause to extend the filing deadline, and his late request for hearing on decision # 143603 is dismissed.

Decision # 151617. Waiver of PUA overpayments is governed by the provisions of the CARES Act as amended, 15 U.S.C. § 9021(d)(4), which requires, for waiver to be granted, that the overpayment of PUA benefits be: (1) without fault on the part of the claimant, and (2) that repayment be contrary to equity and good conscience. 15 U.S.C. § 9023(f)(2)(A)-(B) sets forth the same elements for waiver of overpayments of FPUC benefits. Section 262(b) of the Continued Assistance for Unemployed Workers Act of 2020 sets forth the same requirements for waiver of overpayments of LWA benefits.

Federal guidance provides that, in general, "an individual is considered to be without fault when the individual provided all information correctly as requested by the state, but the state failed to take appropriate action with that information or took delayed action when determining eligibility." Unemployment Insurance Program Letter 20-21, Change 1 (UIPL 20-21 Change 1) at 9 (February 7, 2022). However, "a state may also find that an individual is without fault if the individual provided incorrect information due to conflicting, changing, or confusing information or instructions from the state; the individual was unable to reach the state despite their best efforts to inquire or clarify what information the individual needed to provide; or other similar difficulties (*e.g.*, education, literacy, and/or language barriers) in understanding what information the state needed from the individual[.]" UIPL 20-21 Change 1, at 10.

Order No. 24-UI-273933 denied claimant's April 26, 2022, waiver request because the August 23, 2021 administrative decision imposed penalties under ORS 657.310(2) for a willful misrepresentation or failure to report a material fact to obtain benefits, and claimant was therefore at fault for the overpayment as a matter of law. Order No. 24-UI-273933 at 11-12. While the record supported this conclusion when Order No. 24-UI-273933 was issued, EAB subsequently allowed claimant's late request for hearing on the August 23, 2021, administrative decision and remanded that matter for a

hearing on the merits. The record therefore no longer supports Order No. 24-UI-273933's conclusions because the August 23, 2021, administrative decision is not final.

Because claimant's eligibility for the waiver sought is largely dependent on the outcome of his appeal of the August 23, 2021, administrative decision, Order No. 24-UI-273933 is set aside and the matter remanded for further proceedings in accordance with the outcome of that appeal. As there are common questions of fact to both appeals, particularly regarding the cause of the overpayment, it may be beneficial to consolidate those matters for hearing.

DECISION: Order No. 24-UI-273857 is affirmed. Claimant's late request for hearing on decision # 143603 is dismissed. Order No. 24-UI-273933 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: January 9, 2025

NOTE: You may appeal this decision with regard to Order No. 24-UI-273857 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.

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-273933 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

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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