

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0233-R

Requests for Reconsideration Allowed
Late Applications for Review Allowed
Orders No. 25-UI-283911 and 25-UI-283907 Reversed & Remanded

PROCEDURAL HISTORY: On September 22, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not able to work from March 28, 2021, through August 28, 2021 (weeks 13-21 through 34-21) and was not eligible for benefits for those weeks (decision # 85938). On October 12, 2021, decision # 85938 became final without claimant having filed a request for hearing. On July 14, 2022, the Department served notice of an administrative decision based partly on decision # 85938, concluding that claimant received benefits to which they were not entitled, and assessing an overpayment of \$3,528 in regular unemployment insurance (regular UI) benefits and \$6,300 in Federal Pandemic Unemployment Compensation (FPUC) that claimant was required to repay (decision # 134726). On August 3, 2022, decision # 134726 became final without claimant having filed a request for hearing.

On January 24, 2025, claimant filed late requests for hearing on decisions # 85938 and 134726. ALJ Kangas considered claimant's request for hearing on decision # 85938, and on February 4, 2025, issued Order No. 25-UI-281873, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by February 18, 2025. On February 19, 2025, claimant filed a late response to the appellant questionnaire. ALJ Kangas considered claimant's response to the appellant questionnaire as applicable to both decision # 85938 and 134726. On February 24, 2025, ALJ Kangas issued Order No. 25-UI-283911, re-dismissing claimant's late request for hearing on decision # 85938 and leaving that decision undisturbed. Also on February 24, 2025, ALJ Kangas issued Order No. 25-UI-283907, dismissing claimant's late request for hearing on decision # 134726 and leaving that decision undisturbed.

On March 17, 2025, Orders No. 25-UI-283911 and 25-UI-283907 became final without claimant having filed applications for review with the Employment Appeals Board (EAB). At 12:04 a.m. on March 18, 2025, claimant filed late applications for review of Orders No. 25-UI-283911 and 25-UI-283907 with EAB. EAB combined its review of Orders No. 25-UI-283911 and 25-UI-283907 under OAR 471-041-0095 (October 29, 2006). On April 25, 2025, EAB issued EAB Decisions 2025-EAB-0234 and 2025-EAB-0233, dismissing without prejudice claimant's late applications for review of Orders No. 25-UI-

283911 and 25-UI-283907, respectively. On May 15, 2025, claimant filed requests for reconsideration of EAB Decisions 2025-EAB-0234 and 2025-EAB-0233. This decision is issued pursuant to EAB's authority under ORS 657.290(3). For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2025-EAB-0234-R and 2025-EAB-0233-R).

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 request for reconsideration, has been marked as EAB Exhibit 2, 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, stating 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) On September 22, 2021, the Department mailed decision # 85938 to claimant's address on file with the Department. Decision # 85938 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 October 12, 2021." Order No. 25-UI-283911, Exhibit 1 at 2.

(2) On July 14, 2022, the Department mailed decision # 134726 to claimant's address on file with the Department. Decision # 134726 stated, "If you disagree with the amount of the overpayment, you have the right to appeal this decision. Any appeal from this decision must be filed on or before August 3, 2022, to be timely." Order No. 25-UI-283907, Exhibit 1 at 2.

(3) At the time that claimant was claiming benefits, claimant was homeless and their mail was being forwarded to their parents' house. When claimant eventually received their mail from the Department, they "didn't open [their] unemployment mail for a while because [they] thought it was just some kind of advertisement or something of the sort because [they] had no idea unemployment thought [they] did something wrong[.]" Order No. 25-UI-283907, Exhibit 3 at 14. Claimant was not aware at that time that an overpayment had been assessed, or that the Department had determined that they had been retroactively determined ineligible for benefits they had claimed.

(4) Eventually, claimant started working again. When they began working again, claimant's wages were garnished. In or around early 2024, after finally reading their mail and realizing that they owed money to the Department, claimant contacted the Department and subsequently filed a request for waiver of the overpayment assessed by decision # 134726. The Department waived part of claimant's overpayment, but a significant portion of the balance remained.

(5) On January 22, 2025, claimant talked to the Department regarding what they needed to do to pursue appeals of decisions # 85938 and 134726. Order No. 25-UI-283907, Exhibit 3 at 13. On January 24, 2025, claimant filed late requests for hearing on those decisions.

(6) Order No. 25-UI-283911, mailed to claimant on February 24, 2025, 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. 25-UI-283911 at 3. Order No. 25-UI-283911 also stated on its Certificate of Mailing, "Any appeal from this Order must be filed on or before March 17, 2025, to be timely."

(7) Order No. 25-UI-283907, mailed to claimant on February 24, 2025, 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. 25-UI-283907 at 3. Order No. 25-UI-283907 also stated on its Certificate of Mailing, “Any appeal from this Order must be filed on or before March 17, 2025, to be timely.”

(8) On March 17, 2025, claimant attempted to file applications for review of the orders under review by email. However, when claimant sent the email, claimant found that their email address had been “blocked.” EAB Exhibit 2 at 6. Claimant attempted to send the email multiple times on March 17, 2024, but “kept getting the reply that [they] couldn’t send it, that [their] email address was blocked[.]” EAB Exhibit 2 at 6. Claimant eventually decided to send the email from a different address, which was successful. However, by the time that claimant successfully sent the email from their alternate address, it was 12:04 a.m. on March 18, 2025, four minutes past the timely filing deadline for the applications for review.

CONCLUSIONS AND REASONS: Claimant’s requests for reconsideration are allowed. On reconsideration, EAB Decisions 2025-EAB-0234 and 2025-EAB-0233 are reversed, and claimant’s late applications for review of Orders No. 25-UI-283911 and 25-UI-283907 are allowed. Orders No. 25-UI-283911 and 25-UI-283907 are reversed, and these matters remanded for hearings to determine whether claimant’s late requests for hearing on decisions # 85938 and 134726 should be allowed and, if so, the merits of those decisions.

Reconsideration. ORS 657.290(3) authorizes the Employment Appeals Board to reconsider any previous decision of the Employment Appeals Board, including “the making of a new decision to the extent necessary and appropriate for the correction of previous error of fact or law.” The request is subject to dismissal unless it includes a statement that a copy was provided to the other parties, and is filed on or before the 20th day after the decision sought to be reconsidered was mailed. OAR 471-041-0145(2) (May 13, 2019).

EAB dismissed claimant’s late applications for review without prejudice and subject to claimant filing timely requests for reconsideration within 20 days after EAB’s dismissal decision was issued. Claimant filed requests for reconsiderations consistent with the requirements set forth in OAR 471-041-0145. The requests for reconsideration are, therefore, allowed.

Late Applications for Review. 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 ended. 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. 25-UI-283911 and 25-UI-283907 were due by March 17, 2025. Because claimant did not file their applications for review until March 18, 2025, the applications

for review were late. However, claimant had good cause for failing to file timely applications for review. Claimant attempted multiple times to file their applications for review via email on March 17, 2025, but was unsuccessful because their email address had been blocked. Because claimant could not have reasonably foreseen that their email address was blocked, this was a factor or circumstance beyond their reasonable control, which constitutes good cause. Those factors or circumstances ended when claimant was finally able to file their applications for review with a different email address at 12:04 a.m. on March 18, 2025. As this was less than a day after the factors or circumstances ceased, claimant filed their late applications for review within a reasonable time. Therefore, claimant's late applications for review are allowed.

Late Requests 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 requests for hearing on decisions # 85938 and 134726 were due by October 12, 2021, and August 3, 2022, respectively. Because claimant did not file their requests for hearing on either decision until January 24, 2025, the requests were late.

Claimant was homeless at the time they were claiming benefits and their mail was being forwarded to their parents' house. They did not immediately open their mail when they received it because they believed it was an advertisement, but later found that their wages were being garnished once they started working again. In or around early 2024, claimant spoke to the Department on the phone regarding how to appeal decisions # 85938 and 134726. Claimant subsequently filed a waiver request on the overpayment assessed by decision # 134726, which was only partially granted, and then afterwards filed their requests for hearing on decisions # 85938 and 134726.

Based on the circumstances described above, it is possible that claimant failed to file their timely requests for hearing due to factors beyond their reasonable control. However, further information is necessary to determine whether claimant had good cause for filing the late requests for hearing and, if so, whether they filed the requests within a reasonable time.

On remand, the ALJ should inquire as to the dates that claimant was homeless or otherwise lacked regular access to their mail, as well as the dates that claimant was claiming benefits. Additionally, the ALJ should inquire as to when claimant first received, or otherwise learned of the existence of, decisions # 85938 and 134726, and whether either of those decisions were among the unopened mail that claimant mistakenly believed were advertisements. Further, the ALJ should inquire as to when claimant first learned that their wages were being garnished, when claimant spoke to the Department in early 2024, when claimant filed their waiver request, when claimant learned that the waiver request was not granted in full, whether and when anyone had advised claimant that they should file a waiver request instead of (rather than *in addition to*) requests for hearing, and what caused claimant to contact the Department on January 22, 2025, as opposed to some earlier date, about filing their requests for hearing. If the record on remand shows that claimant's late requests for hearing on decisions # 85938 and 134726 should be allowed, the ALJ should proceed to the merits of those decisions.

DECISION: Claimant's requests for reconsideration are allowed. On reconsideration, EAB Decisions 2025-EAB-0234 and 2025-EAB-0233 are reversed, and the applications for review filed March 18, 2025, are allowed. Orders No. 25-UI-283911 and 25-UI-283907 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: June 17, 2025

NOTE: The failure of any party to appear at the hearings on remand will not reinstate Orders No. 25-UI-283911 and 25-UI-283907 or return these matters to EAB. Only timely applications for review of the orders mailed to the parties after the remand hearings will return these matters 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 دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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