

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0282

Order No. 25-UI-289550 Reversed
Late Request for Hearing Allowed
Merit Hearing on Decision # 132035 Required
Order No. 25-UI-289651 Reversed & Remanded

PROCEDURAL HISTORY: On October 7, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and was therefore disqualified from receiving unemployment insurance benefits effective June 6, 2021 (decision # 132035). On October 27, 2021, decision # 132035 became final without claimant having filed a request for hearing. On June 8, 2022, the Department served notice of an administrative decision, based in part on decision # 132035, concluding that claimant received benefits to which he was not entitled, and assessing an overpayment of \$2,041 in regular unemployment insurance (regular UI) benefits and \$3,900 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay to the Department (decision # 152634). On June 28, 2022, decision # 152634 became final without claimant having filed a request for hearing. On April 10, 2025, claimant filed late requests for hearing on decisions # 132035 and 152634. ALJ Kangas considered claimant's requests. On April 15, 2025, ALJ Kangas issued Order No. 25-UI-289550, dismissing claimant's request for hearing on decision # 132035 as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by April 29, 2025. On April 16, 2025, ALJ Kangas issued Order No. 25-UI-289651, dismissing claimant's request for hearing on decision # 152634 as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by April 30, 2025. On May 3, 2025, claimant filed late responses to the appellant questionnaires for Orders No. 25-UI-289550 and 25-UI-289651, and timely applications for review of the same, with the Employment Appeals Board (EAB).

EAB combined its review of Orders No. 25-UI-289550 and 25-UI-289651 under OAR 471-041-0095 (October 29, 2006). For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2025-EAB-0282 and 2025-EAB-0283).

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 responses

to the appellant questionnaires, 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) On October 7, 2021, the Department mailed decision # 132035 to claimant's address on file with the Department. Decision # 132035 stated that claimant had been discharged on June 12, 2021, that he was disqualified from benefits effective June 6, 2021, and that the decision itself "replace[d] a prior payment determination." Order No. 25-UI-289550, Exhibit 1 at 1. Decision # 132035 also 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 27, 2021." Order No. 2025-UI-34298, Exhibit 1 at 3.

(2) Claimant did not receive a copy of decision # 132035.

(3) On June 8, 2022, the Department mailed decision # 152634 to claimant's address on file with the Department. Decision # 152634 assessed an overpayment for the weeks of June 6, 2021, through September 11, 2021 (weeks 23-21 through 36-21), and concluded that claimant was not eligible for benefits for those weeks due to the administrative decision issued on October 7, 2021, which had concluded that claimant was discharged for misconduct. Order No. 25-UI-289651, Exhibit 1 at 1. Decision # 152634 also stated that "[t]he decision(s) which created the overpayment was not appealed by claimant or was not appealed in a timely manner and has now become final." Order No. 25-UI-289651, Exhibit 1 at 1. Further, decision # 152634 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 June 28, 2022, to be timely." Order No. 25-UI-289651, Exhibit 1 at 2.

(4) In 2022, claimant requested a waiver of the overpayment assessed by decision # 152634. While the state portion of the overpayment (i.e., the overpaid regular UI benefits) was waived, the federal portion of the overpayment (i.e., the overpaid FPUC benefits) was not waived. However, claimant did not receive notice of the FPUC waiver denial, and no collection activities were taken against claimant regarding the overpaid FPUC benefits. Claimant therefore believed that the matter had been completely resolved. *See* Order No. 25-UI-289651, Exhibit 2 at 4.

(5) In or around April 2025, claimant learned that the federal portion of the overpayment had not been waived. EAB Exhibit 1 at 2. On April 10, 2025, claimant submitted a filing that was construed as late requests for hearing on decisions # 132035 and 152634.¹

CONCLUSIONS AND REASONS: Order No. 25-UI-289550 is reversed and this matter remanded for a hearing on the merits of decision # 132035. Order No. 25-UI-289651 is set aside and this matter remanded for a hearing on whether claimant's late request for hearing on decision # 152634 should be allowed and, if so, the merits of that decision.

¹ Although the filing was construed as requests for hearing on decisions # 132035 and 152634, it stated that claimant "[d]idn't understand that the waivers he submitted in 2022 only covered state portion as fed CF is not waivable." Order No. 25-UI-289651, Exhibit 2 at 4. This suggests that claimant may have also sought to file a request for hearing on the denial of the waiver request for the federal portion of the overpayment. To the extent that claimant still wishes to do so, he is advised to contact the Department directly to file a request for hearing on the waiver denial.

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)(A), "good cause" does not include failure to receive a document due to not notifying the Department or OAH of an updated address while the person is claiming benefits or if the person knows, or reasonably should know, of a pending appeal.

Late Request for Hearing on Decision # 132035. The request for hearing on decision # 132035 was due by October 7, 2021. Because claimant did not file his request for hearing on that decision until April 10, 2025, the request was late. However, claimant had good cause for failing to file a timely request for hearing on that decision.

Claimant stated on his appellant questionnaire response for decision # 132035 that he did not receive a copy of that administrative decision. EAB Exhibit 1 at 3. Claimant therefore had no reason to know at the time of its issuance that it had actually been issued. Under OAR 471-040-0010(1)(b)(A), good cause does not include failure to receive a document due to not notifying the Department or OAH of an updated address while the person is claiming benefits or if the person knows, or reasonably should know, of a pending appeal. The record does not definitively show whether or not claimant was either claiming benefits at the time that decision # 132035 was issued, or whether he had reason to know of a pending appeal at that time. However, it can be reasonably inferred from the record that neither were the case.

As to the former, decision # 132035 stated that it replaced a prior payment determination, indicating that it denied claimant benefits that he had already claimed and been paid for. Given that the weeks at issue in decision # 152634 were the weeks of June 6, 2021, through September 11, 2021, it stands to reason that claimant likely stopped claiming benefits after the conclusion of those weeks, and therefore was not still claiming benefits when decision # 132035 was issued in October 2021. As to the latter, there is no indication in the record that claimant had any pending appeals at the time that decision # 132035 was issued. Therefore, OAR 471-040-0010(1)(b)(A) does not apply and is not a bar to a finding of good cause. As such, because claimant did not receive a copy of decision # 132035, he had no reason to know of its issuance, and therefore failed to file a timely request for hearing on it due to factors beyond his reasonable control, which constitutes good cause.

Further, claimant filed his late request for hearing within a reasonable time. The issuance of decision # 152634 (the overpayment decision) suggests that claimant may have been at least broadly aware of decision # 132035, as the overpayment decision obliquely referenced that decision as the basis for the overpayment. However, while the overpayment decision indicated that the work separation decision was not appealed in a timely manner and had become final, it did not state that claimant could still file a late request for hearing on the work separation decision, or that a late request for hearing could potentially be allowed for a showing of good cause. Therefore, because claimant was not given notice of his right to appeal decision # 132035, the factors which prevented him from filing a timely request for hearing did not cease until he actually filed his late request for hearing on April 10, 2025. As such, claimant filed his late request for hearing on that decision within a reasonable time of when the factors which prevented a

timely filing ceased. Claimant's late request for hearing on decision # 132035 therefore is allowed, and claimant is entitled to a hearing on the merits of that decision.

Late Request for Hearing on Decision # 152634. The request for hearing on decision # 152634 was due by June 28, 2022. Because claimant did not file his request for hearing on that decision until April 10, 2025, the request was late.

Claimant stated on his appellant questionnaire response for decision # 152634, in response to the question asking on what date he filed appeal, "Never did. Didn't get one." EAB Exhibit 1 at 1. Claimant did not indicate on which date he received decision # 152634, or whether he received it at all. EAB Exhibit 1 at 1. Based on this, it is possible that claimant either never received a copy of decision # 152634, or did not receive it timely. If so, claimant may have had good cause for failing to file a timely request for hearing on that decision. However, further information is necessary to determine whether claimant's late request for hearing on that decision should be allowed. This is particularly true in light of the fact that claimant requested a waiver of the overpayment assessed by decision # 152634, suggesting that he at least became aware of the overpayment sometime in 2022.

On remand, the ALJ should inquire as to when, if at all, claimant first received or otherwise became aware of decision # 152634. To the extent that claimant did not receive it timely or at all, the ALJ should ask about whether claimant was having difficulty receiving his mail, whether the decision was mailed to the correct address and, if it was not, ask questions to determine if OAR 471-040-0010(1)(b)(A) is applicable. The ALJ should also ask when, regardless of his knowledge or receipt of decision # 152634 itself, claimant first became aware of the overpayment assessed by that decision and when he first became aware of his right to appeal that decision. Finally, the ALJ should ask what caused claimant to file the request for hearing on decision # 152634, as opposed to some earlier date. If the record on remand shows that claimant's late request for hearing on decision # 152634 should be allowed, the ALJ should proceed to the merits of that decision.

DECISION: Orders No. 25-UI-289550 and 25-UI-289651 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 9, 2025

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 25-UI-289550 and 25-UI-289651 or return this matter to EAB. Only a timely application for review of the order mailed to the parties after the remand hearing will return this matter 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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