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

EMPLOYMENT APPEALS BOARD DECISION 2026-EAB-0586

Reversed
Late Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On March 7, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing a $12,684 overpayment in combined regular unemployment insurance (regular UI) benefits, extended benefits (EB), Pandemic Emergency Unemployment Compensation (PEUC) benefits, and Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay to the Department, a $3,805.20 monetary penalty, and a 52-week penalty disqualification from future benefits. On March 27, 2023, the March 7, 2023 overpayment decision became final without claimant having filed a request for hearing.

On February 10, 2025, claimant filed a late request for hearing that was not recognized as such by the Department. On March 4, 2026,[1] claimant filed a late request for hearing. ALJ Kangas considered the March 4, 2026 request, and on April 9, 2026 issued Order No. 26-UI-326511, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by April 23, 2026. On April 13, 2026, claimant filed a timely response to the appellant questionnaire. On May 15, 2026, ALJ Blam conducted a hearing at which the employer declined to participate,[2] and on May 26, 2026 issued Order No. 26-UI-331129, canceling Order No. 26-UI-326511 and re-dismissing claimant's request for hearing as late without good cause. On June 8, 2026, claimant filed an application for review of Order No. 26-UI-331129 with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant's argument in reaching this decision.[3]

[1] The order under review concluded that this late request for hearing was filed on March 6, 2026. Order No. 26-UI-331129 at 3. However, that appears to be the date the Department reviewed or acted on the message, not the date claimant sent it, which per the timestamp was March 4, 2026 at 11:55:18 a.m. Exhibit 1 at 2.

[2] The employer initially appeared for the hearing but, after discussion of the issues to be decided, chose not to participate further and disconnected from the call. Audio Record at 12:05.

EVIDENTIARY MATTER: Claimant objected to EAB's consideration of Exhibit 1, which was admitted at hearing, and contended that the hearing was unfair because the Office of Administrative Hearings (OAH) did not receive proposed exhibits claimant intended to offer as evidence during the hearing. Claimant's Argument at 1. Although the body of Order No. 26-UI-331129 stated that Exhibit 1 was admitted "without objection," a footnote explained that claimant had objected to admission of the exhibit because she had not received it prior to the hearing and that the objection was, in effect, overruled, because claimant declined the ALJ's offer to postpone the hearing so that claimant could review a copy of the exhibit and resubmit any proposed exhibits of her own that were not received by OAH. Order No. 26-UI-331129 at 2.

OAR 471-040-0023(4) (August 1, 2004) provides: "Prior to commencement of an evidentiary hearing that is held by telephone, each party and the Department shall provide to all other parties and to the Department copies of documentary evidence that it will seek to introduce into the record." The record shows that the Department sent a copy of Exhibit 1 to claimant's email address of record prior to the hearing. Audio Record at 2:39. Claimant stated at hearing that she did not receive the copy of Exhibit 1 prior to the hearing because her email account storage was full and could not receive additional emails, and she therefore objected to its admission. Audio Record at 4:50.

OAR 471-040-0023(5) provides

> Nothing in this rule precludes any party or the Department from seeking to introduce documentary evidence in addition to evidence described in section (4) during the telephone hearing and the presiding officer shall receive such evidence, subject to the applicable rules of evidence, if inclusion of the evidence in the record is necessary to conduct a full and fair hearing. If any evidence introduced during the hearing has not previously been provided to the Department and to the other parties, the hearing may be continued upon the request of any party or the Department for sufficient time to allow the party or the Department to obtain and review the evidence.

Because claimant declined to continue the hearing in order to receive and review a copy of Exhibit 1, the ALJ properly overruled claimant's objection. EAB therefore considered the portions of Exhibit 1 that were relevant to determining whether claimant's late request for hearing should be allowed.[4] Similarly, the ALJ appropriately proceeded with the hearing after claimant declined the opportunity to continue the hearing so that she could resubmit any documents she wanted admitted as evidence, but which OAH did not receive prior to the hearing. EAB reviewed the entire hearing record, which shows that the ALJ inquired fully into the matters at issue and gave all parties reasonable opportunity for a fair hearing as required by ORS 657.270(3) and (4), and OAR 471-040-0025(1) (August 1, 2004).

The parties may offer new information concerning the merits of the March 7, 2023 hearing into evidence at the remand hearing. At that time, the ALJ will determine if the new information will be admitted into

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[3] Claimant's argument did not state that she provided a copy of her argument to the employer, which is typically required by OAR 471-041-0080(2)(a) (May 13, 2019). However, as the matter does not involve a work separation, and given the employer's statement at hearing that they did not want to participate further in the appeal, EAB considered claimant's argument.

[4] Claimant may wish to review Exhibit 1 in its entirety, because it will remain part of the record for the hearing on the merits.

the record. The parties must follow the instructions on the notice of the remand hearing about documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties before the hearing at their addresses on the certificate of mailing for the notice of hearing.

FINDINGS OF FACT: (1) The March 7, 2023 overpayment decision, mailed to claimant's address on file with the Department on March 7, 2023, stated, "Any appeal from this decision must be filed on or before March 27, 2023 to be timely." Exhibit 1 at 6. Claimant was not claiming benefits and did not have an active appeal pending regarding benefits as of March 7, 2023. The March 7, 2023 overpayment decision was returned to the Department as undeliverable. The March 7, 2023 overpayment was assessed based on claimant having allegedly underreported remuneration earned during weeks claimed.

(2) Prior to the March 7, 2023 overpayment decision, the Department had issued other overpayment decisions on the same claims. The prior overpayment decisions were based on Department errors unrelated to claimant's reporting of remuneration, and by March 7, 2023, the Department had waived recovery of those overpayments. Claimant was therefore unaware of any debt owed to the Department in 2023 or early 2024.

(3) At some point in 2024, claimant's 2023 income tax refund was intercepted to partially satisfy the overpayment assessed in the March 7, 2023 overpayment decision. Claimant believed that the intercept had erroneously been made to attempt to recover the previously-waived overpayments.

(4) On July 17, 2024, claimant called the Department regarding the tax intercept, and the March 7, 2023 overpayment decision was read to her during the call. Claimant requested a waiver of this overpayment during the call but was told that "fraud does not get waived," and a formal waiver request was therefore not filed. Exhibit 1 at 56. The representative's notes of the call suggested that claimant expressed disagreement with the conclusion that she had been overpaid, stating that claimant said she had submitted paystubs to corroborate the remuneration she had reported on her claims and believed the matter had been "corrected" during the adjudication process prior to the decision's issuance. Exhibit 1 at 56. The notes did not mention claimant being told of her right to file a late request for hearing, and instead implied that claimant was led to believe that repayment was her only option. *See* Exhibit 1 at 56 ("I advised [claimant] to speak with waivers and admin. . . but the debt is still collectable and will need to set up [a payment plan]. [Claimant] refused and said she will not set up [a payment plan]. I advised that I will proceed with legal actions immediately.")

(5) Claimant believed, based on the conversation, that she could not request waiver of the overpayment or appeal the overpayment decision, and therefore that her only recourse was gathering evidence to persuade the Department to cancel the March 7, 2023 overpayment decision.

(6) On February 5, 2025, claimant called the Department and requested a copy of the March 7, 2023 overpayment decision, as well as documents pertaining to the earlier, unrelated overpayment waivers. These documents were mailed to claimant the following day.

(7) On February 10, 2025, claimant sent an electronic message to the Department with the subject line "Appeal" and in the body wrote, in relevant part: "I am requesting an appeal for that letter I received claiming fraud for overpayments. I am also requesting a stay of collections for my collections OED is

trying to collect. . . including tax refunds, due to an open appeal at this time." Audio Record at 1:02:54. The Department did not treat this as a request for hearing, and replied to claimant, "If you need assistance regarding the overpayment please contact the benefit [payment] control unit[.]" Audio Record at 1:03:45.

(8) Claimant contacted the Department in April 2025, May 2025, and February 2026, each time seeking information about, or attempting to refute, the overpayment assessed in the March 7, 2023 overpayment decision.

(9) On March 4, 2026, claimant sent an electronic message to the Department that stated, in relevant part: "I have requested an appeal for the. . . overpayment issue from covid. I requested this back when it was brought to my attention about 2 years ago." Exhibit 1 at 2. The Department treated this filing as a late request for hearing on the March 7, 2023 overpayment decision.

CONCLUSIONS AND REASONS: Claimant's late request for hearing is allowed, and a hearing on the merits of the March 7, 2023 overpayment decision is required.

ORS 657.269 states 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 states that the 20-day deadline may be extended a "reasonable time" upon a showing of "good cause." OAR 471-040-0010 (February 10, 2012) states 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 ended. 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.

Under OAR 471-040-0005(2)(a) (July 15, 2018), an individual may request a hearing on an administrative decision related to payment of benefits by "mail, fax, e-mail, or other means as designated by [the] Employment Department[.]" Use of forms provided by the Department or similar offices for requesting a hearing is not required so long as the individual "expresses a present intent to appeal and it can be determined what issue or decision is being appealed." OAR 471-040-0005(1).

The request for hearing on the March 7, 2023 overpayment decision was due by March 27, 2023. Claimant's March 4, 2026 request for hearing was therefore late. The record shows that claimant filed an earlier request for hearing that the Department failed to recognize, on February 10, 2025, that was also filed late. The February 10, 2025 filing expressed a present intent to appeal through its use of the word "Appeal" in the subject line and the statement "I am requesting an appeal" in the body, and identified the March 7, 2023 overpayment decision as the decision being appealed by referring to it as "that letter I received claiming fraud for overpayments," a copy of which had been mailed to claimant four days prior. Audio Record at 1:02:24. The late request for hearing at issue is therefore the one claimant filed on February 10, 2025.

Claimant did not receive the March 7, 2023 overpayment decision when it was mailed, as evinced by it having been returned to the Department as undeliverable. At the time it was mailed, claimant was not claiming benefits and did not have a benefits appeal pending, and a finding of good cause for the late request for hearing is therefore not barred by OAR 471-040-0010(1)(b)(A). The order under review concluded that, in not receiving the March 7, 2023 decision when it was mailed, good cause existed to extend the filing deadline, but that this factor ended on July 17, 2024 when a representative read the decision to claimant by phone and told her that waiver of recovery was not possible. Order No. 26-UI-331129 at 4. As discussed above, the record supports that good cause exists to extend the filing deadline based on claimant's failure to receive the decision. However, the record does not support that the factor that prevented timely filing ended on July 17, 2024, and that claimant's February 10, 2025 late request for hearing therefore was not filed within a "reasonable time."

The record shows that claimant first became aware of potentially owing a debt to the Department in early 2024, through learning that her 2023 income tax refund had been intercepted. However, claimant initially thought it was attributable to an error having been made regarding recovery of earlier overpayments, which by that time had been waived. It was not until the July 17, 2024 phone conversation with a Department representative that claimant learned that the March 7, 2023 overpayment decision had been issued. Claimant testified that the representative told her that because the overpayment decision alleged that the benefits had been obtained through fraud, she was ineligible to request waiver of recovery or to request a hearing. Audio Record at 51:56. The representative's notes corroborate claimant's testimony regarding discussion of the waiver; were silent as to whether claimant's appellate rights were discussed; and implied that claimant was told that her only options were to begin repaying the overpayment or face immediate "legal actions." Exhibit 1 at 56. On this record, even if claimant generally understood from prior interactions with the department, such as the previous overpayment and waiver decisions, that she had the right to request a hearing on any administrative decision, the evidence does not show that, after the July 17, 2024 phone conversation, claimant knew or should have known of her right to file a *late* request for hearing on the March 7, 2023 overpayment decision. Therefore, the factor that prevented timely filing did not end at that time.

On February 5, 2025, claimant called the Department and requested copies of documents, including the March 7, 2023 overpayment decision. The record shows that claimant believed her only option to contest the overpayment at that point was to gather and present evidence to the Department that she had not been overpaid, in the hope the decision would be cancelled. It is reasonable to infer that claimant received the copy of the March 7, 2023 overpayment decision at some point between the day it was mailed, on February 6, 2025, and when claimant filed her late request for hearing on February 10, 2025, in which she referred to having received "that letter. . . claiming fraud for overpayments[.]" Audio Record at 1:02:24.[5] It is also reasonable to infer that claimant had reason to understand that she could file a late request for hearing on the March 7, 2023 decision only after reading the copy of it. Therefore, the factor that prevented timely filing ended, at the earliest, on February 7, 2025. Accordingly, because claimant filed her request for hearing on February 10, 2025, it was filed within the seven-day "reasonable time" period. For these reasons, claimant's February 10, 2025 late request for hearing is allowed, and the matter remanded for a hearing on the merits of the March 7, 2023 overpayment decision.

[5] Claimant testified at hearing that she did not remember receiving a copy of the March 7, 2023 overpayment decision in response to her February 5, 2025 request, and first read the decision in 2026 using Frances Online. Audio Record at 56:45. However, later in the hearing, the Department's witness read claimant's February 10, 2025 filing into the record in which claimant mentioned having received the copy, and claimant did not thereafter dispute the accuracy of that testimony. Therefore, more likely than not, claimant received the copy between February 7 and 10, 2025.

DECISION: Order No. 26-UI-331129 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: July 17, 2026

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 26-UI-331129 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.

State of Oregon Employment Department

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 ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

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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