

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0087

Application for Review Dismissed

FINDINGS OF FACT AND PROCEDURAL HISTORY: On July 20, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision assessing a \$4099.00 overpayment, \$809.80 monetary penalty, and 52 penalty weeks (decision # 202038). On August 10, 2015, decision # 202038 became final without claimant having filed a timely request for hearing. On February 23, 2018, claimant filed a late request for hearing. On February 28, 2018, ALJ Kangas issued Order No. 18-UI-104185, dismissing claimant's late request for hearing subject to claimant's right to review the request by responding to an appellant questionnaire by March 14, 2018. On March 20, 2018, Order No. 18-UI-104185 became final without claimant having responded to the questionnaire or filed a timely application for review with the Employment Appeals Board (EAB). On January 7, 2019, claimant filed a document with the Oregon Employment Department requesting that his case and late appeal be reevaluated. We construe claimant's January 7, 2019 filing as a late application for review of Order No. 18-UI-104185 under OAR 471-041-0060(1).

CONCLUSIONS AND REASONS: The application for review should be dismissed.

On January 7, 2019, the appellant filed an application for review of Order No. 18-UI-104185 with the Employment Appeals Board (EAB). ORS 657.270(6) and ORS 657.270(7)(c) required the application for review to be filed no later than March 20, 2018. The deadline for filing a late application for review may be extended if the party filing the late application for review shows "good cause" for the late filing, which is defined as "evidence that factors or circumstances beyond the applicant's reasonable control prevented timely filing." OAR 471-041-0070(2)(a).

Claimant did not timely appeal the decisions in this matter because he thought paying off the overpayment would also clear the penalty weeks that had been assessed in the same decision. However, decision # 202038 stated:

Claimant is disqualified for 52 week(s) of future benefits. * * * Claimant received benefits to which claimant was not entitled. Claimant must repay \$4099.00 to the state of Oregon, Employment Department. In addition, claimant must satisfy the penalty described above. * * * In addition to the overpayment mentioned above, claimant is assessed a monetary penalty of at least 15% but not more than 30% of the amount due . . . The penalty amount is \$819.80 . . .

The “repayment information” enclosure mailed with decision # 202038 stated:

If penalty weeks are assessed, they must be served before benefits can be deducted from your checks and applied to this debt. Serving penalty weeks will not reduce your debt.

Neither the language in decision # 202038 nor the repayment information the Department provided suggested that the penalty would be resolved if claimant repaid the overpayment. In fact, the decision specifically stated that the penalties were “[i]n addition” to the overpayment, and the repayment information strongly implied that the overpayment and penalty weeks were not related. While claimant indicated that he cleared the overpayment and thought that also cleared the penalty weeks he did not describe or present evidence of communication from the Department suggesting that he was told or promised that his penalty weeks would be cleared if he repaid the overpayment.

The evidence in this record therefore does not suggest that claimant was misled about the existence of or his liability to serve penalty weeks in association with decision # 202038, but rather shows that he was specifically notified of that liability and that the penalty weeks were separate from the overpayment itself. To the extent claimant’s misunderstanding about the ongoing nature of his penalty week liability in this case caused his late filing, it was, therefore, within claimant’s reasonable control to file a timely application for review. In the absence of evidence suggesting that claimant had other reasons for failing to file a timely application for review in this case, and that those reasons amounted to good cause, claimant’s late application for review must be dismissed.

Order No. 18-UI-104185 remains undisturbed. EAB will take no further action with regard to this matter.

DECISION: The application for review filed January 7, 2019 is dismissed. Order No. 18-UI-104185 remains undisturbed.

J. S. Cromwell and D. P. Hettle;
S. Alba, not participating.

DATE of Service: January 31, 2019

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 listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem,

Oregon 97310 or visit the Court of Appeals website at courts.oregon.gov. Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

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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 desisyong ito.

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 Asuntos Laborales. Si no está de acuerdo con esta decisión, puede presentar una Petición 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 – តម្រូវការនេះមិនមែនជាភារកិច្ចរបស់រដ្ឋទេ ប៉ុន្តែវាជាភារកិច្ចរបស់អ្នកប្រើប្រាស់។ បើលោកអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រេចនេះទេ លោកអ្នកអាចដាក់ពាក្យប្តឹងសុំឲ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

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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