

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0323**

*Affirmed*  
*Late Request for Hearing Dismissed*  
*Overpayment Assessed*

**PROCEDURAL HISTORY:** On December 7, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from October 14 through December 1, 2018 (decision # 104335). On December 27, 2018, decision # 104335 became final without claimant having filed a request for hearing. On February 13, 2019, the Oregon Employment Department (the Department) served notice of another administrative decision assessing a \$2,605 overpayment that claimant was liable to repay (decision # 171112). On February 15, 2019, claimant filed a late request for hearing on decision # 104335 and a timely request for hearing on decision # 171112. On March 11, 2019, ALJ Snyder conducted hearings and issued Order No. 19-UI-126121, dismissing claimant's late request for hearing on decision # 104335 as untimely without a showing of good cause, and on March 15, 2018 issued Order No. 19-UI-126504, affirming decision # 171112. On March 30, 2019, claimant filed applications for review of both Orders with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Order No. 19-UI-126121 and Order No. 19-UI-126504. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2019-EAB-0323 and 2019-EAB-0324).

**FINDINGS OF FACT:** (1) Claimant filed an initial claim for unemployment insurance benefits on July 11, 2018. Claimant's weekly benefit amount was \$383.

(2) Claimant claimed and was paid benefits for the weeks of, October 14, 2018 through December 1, 2018 (weeks 42-18 and 48-18), the weeks at issue. When claiming benefits for each week at issue, claimant reported to the Department that she was available for work. Claimant was paid her full benefit amount for weeks 42-18 through 46-18. Claimant reported earnings and was paid \$340 for week 47-18 and \$350 for week 48-18. The Department therefore paid claimant a total of \$2,605 in benefits for the weeks at issue.

(3) On December 7, 2018, the Department mailed administrative decision # 104335 to claimant's address of record. The decision stated that claimant had until December 27, 2018 to request a hearing on decision # 104335. Claimant received decision # 104335 shortly after it was mailed to her on December 7, 2018, but she did not read the appeal deadline.

(4) On February 13, 2019, the Department mailed decision # 171112 to the same address that it mailed decision # 104335.

(5) On February 15, 2018, claimant e-mailed the Department and requested a hearing on decision # 104335 and # 171112.

**CONCLUSIONS AND REASONS:** Claimant did not show good cause for filing a late request for hearing on decision # 104335. Claimant's late request for hearing on decision # 104335 therefore is dismissed. Claimant was overpaid \$2,605 in benefits that she must repay to the Department.

**Late Request 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 it 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.

At hearing, claimant acknowledged that she received decision # 104335 shortly after December 7, 2018, read it, but failed to notice the appeal deadline. Claimant's request for hearing on decision # 104335 was filed seven weeks late, and reading the appeal deadline was a factor within her reasonable control. And although claimant apparently made a mistake when reading the decision, it was not an "excusable" mistake 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. Therefore, claimant has failed to establish good cause to extend the filing deadline.

Claimant's late request for hearing on decision # 104335 therefore is dismissed. Decision # 104335 is final and remains in effect. Claimant was not available for work from October 14 through December 1, 2018, and was not eligible to receive benefits for those weeks, as a matter of law.

**Overpayment.** ORS 657.310(1) provides that an individual who received benefits to which the individual was not entitled is liable to either repay the benefits or have the amount of the benefits deducted from any future benefits otherwise payable to the individual under ORS chapter 657. That provision applies if the benefits were received because the individual made or caused to be made a false statement or misrepresentation of a material fact, or failed to disclose a material fact, regardless of the individual's knowledge or intent. *Id.*

Claimant received \$2,605 in unemployment insurance benefits for the weeks covered by decision # 171112. When claiming benefits each of those weeks, claimant reported to the Department that she was available for work. The Department paid claimant the benefits based, in part, on those reports, which, pursuant to decision # 104335, were false as a matter of law. Regardless of claimant's knowledge or intent, she is liable to repay the \$2,605 in benefits to the Department.

**DECISION:** Order No. 19-UI-126121 and Order No. 19-UI-126504 are affirmed.

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

**DATE of Service: April 19, 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](http://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 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 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**

ເອົາໃຈໃສ່ – ຄໍາຕັດສິນນີ້ມີຜົນກະທົບຕໍ່ກັບເງິນຊ່ວຍເຫຼືອການຫວ່າງງານຂອງທ່ານ. ຖ້າທ່ານບໍ່ເຂົ້າໃຈຄໍາຕັດສິນນີ້, ກະລຸນາຕິດຕໍ່ຫາຄະນະກຳມະການອຸທອນການຈ້າງງານໃນທັນທີ. ຖ້າທ່ານບໍ່ເຫັນດີນຳຄໍາຕັດສິນນີ້, ທ່ານສາມາດຍື່ນຄໍາຮ້ອງຂໍການທົບທວນຄໍາຕັດສິນນຳສານອຸທອນລັດ Oregon ໄດ້ ໂດຍປະຕິບັດຕາມຄໍາແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

**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 دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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