

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0335**

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

**PROCEDURAL HISTORY:** On July 26, 2012, the Oregon Employment Department (the Department) served notice, by mail, of an administrative decision concluding that claimant willfully made a misrepresentation and failed to report material fact to obtain benefits, and therefore was overpaid \$7,936 in benefits that he must repay the Department, is disqualified from 52 weeks of future benefits, and assessed a \$1,190.40 monetary penalty (overpayment decision). On August 15, 2012, the overpayment decision became final without claimant having filed a request for hearing. On January 25, 2019, claimant filed a late request for hearing. On January 31, 2019, ALJ Kangas issued Order No. 19-UI-123725, dismissing claimant's request for hearing as untimely without a showing of good cause, subject to claimant's right to renew his request by responding to an appellant questionnaire by February 14, 2019. On February 11, 2019, claimant filed a timely response to the appellant questionnaire. On February 12, 2019, the Office of Administrative Hearings (OAH) cancelled and vacated Order No. 19-UI-123725, and on February 21, 2019 scheduled a hearing for March 7, 2019 on whether claimant's late request for hearing should be allowed. On March 7, 2019, ALJ Monroe conducted a hearing, and on March 13, 2018 issued Order No. 19-UI-126343, re-dismissing claimant's late request for hearing as untimely without good cause. On April 2, 2019, claimant filed an application for review of Order No. 19-UI-126343 with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) The July 26, 2012 overpayment decision stated that to be timely, any appeal from the decision had to be filed on or before August 15, 2012. Claimant did not file a request for hearing until January 25, 2019.

(2) Between February 2012 and October 2012, claimant was separated from his wife and not living at his residence. During this time, claimant did not have a permanent address and was staying with various friends. Claimant's wife would periodically bring claimant his mail, or he would occasionally stop by the residence and pick it up. The decision was mailed to his correct address and he received it, but he may not have received it until after the appeal deadline had already passed.

(3) In September 2012, claimant began receiving monthly billing statements for the overpayment from the Department.

(4) On October 18, 2012, claimant spoke with a Department representative and discussed the overpayment decision. During the phone call claimant was told that he needed to file a late appeal on the overpayment decision, however claimant did not request a hearing at that time.

(5) On March 25, 2015, claimant spoke with a Department representative to attempt to set up a payment plan for the overpaid benefits, however claimant did not request a hearing at that time.

(6) In November 2018, claimant spoke with a Department representative and was told that he could request a late appeal of the July 26, 2012 overpayment decision. Claimant requested that the Department email him a request form, which the Department sent to him on December 18, 2018. However claimant did not receive the form until late December 2018 or early January 2019 because the Department's emails were going to his spam folder.

**CONCLUSIONS AND REASONS:** Claimant's late request for hearing on the July 26, 2012 decision is dismissed.

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. A request for hearing may be filed on forms provided by the Department or similar offices in other states. OAR 471-040-0005(1) (July 15, 2018). Use of the form is not required provided the party specifically requests a hearing or otherwise expresses a present intent to appeal. *Id.* ORS 657.875 provides that the 20-day filing 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 or circumstances beyond an applicant's reasonable control or an excusable mistake, and defines "reasonable time" as seven days after those factors or factors ceased to exist.

Here, claimant filed his request for hearing on the July 26, 2012 overpayment decision six and a half years after the filing deadline. Assuming, *arguendo*, that claimant had good cause for failing to file a timely request for hearing because he was not living at his residence at the time the Department mailed the decision and he did not receive the decision until after the August 15, 2012 filing deadline, the next issue is whether he filed his request for hearing within a reasonable amount of time.

The record shows that claimant had a conversation with a Department representative on October 18, 2012, during which he discussed the overpayment of benefits and the possibility of an appeal. In addition, starting in September 2012 the Department began mailing claimant monthly billing statements for the overpayment. Claimant moved back to his residence sometime in October 2012, and he did not deny that he received the monthly billing statements. Furthermore, claimant acknowledged that on March 25, 2015, during a phone conversation with a Department representative regarding the overpayment, he did not request a hearing. At a minimum, the circumstances that prevented claimant from filing a timely request for hearing ceased to exist on October 18, 2012, when claimant became aware of the decision, and the Department representative told him he could file an appeal. Claimant filed his request for hearing more than 6 years after he first became aware of the decision, and therefore more than seven days after the circumstances that prevented a timely filing ceased to exist. Claimant therefore failed to file his request for hearing within a reasonable time as defined under OAR 471-040-0010.

Claimant's late request for hearing on decision # 195284 therefore is dismissed.

**DECISION:** Order No. 19-UI-126343 is affirmed.

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

**DATE of Service:** May 3, 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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