

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0381**

*Reversed*  
*No Overpayment*

**PROCEDURAL HISTORY AND FINDINGS OF FACT:** On December 10, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not eligible for Trade Readjustment Act (TRA) benefits after August 8, 2018 (decision # 92845). On December 31, 2018, decision # 92845 became final without claimant having filed a request for hearing. On February 7, 2019, the Department served notice of an administrative decision, based on decision # 92845, concluding that claimant was overpaid \$2,004 in TRA benefits for the weeks from August 12 through September 22, 2018 (decision # 100937). On February 27, 2019, decision # 100937 became final without claimant having requested a hearing.

On March 5, 2019, claimant filed late requests for hearing on decision # 92845 and decision # 100937. On March 13, 2019, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for March 28, 2019 at 2:30 p.m. on whether claimant's late request for hearing on decision # 92845 should be allowed and, if so, the merits of that decision. On March 13<sup>th</sup>, OAH also served notice of a hearing scheduled for March 28<sup>th</sup> at 3:30 p.m. on whether claimant's late request for hearing on decision # 100937 should be allowed and, if so, the merits of that decision. On March 28<sup>th</sup>, claimant failed to appear at the hearing regarding decision # 92845 but appeared for the hearing regarding decision # 100937, and ALJ Shoemake conducted a hearing regarding decision # 100937.

On April 2, 2019, ALJ Shoemake issued Order No. 19-UI-127451 dismissing claimant's request for hearing on decision # 92845 due to her failure to appear at the hearing regarding that decision. On April 4, 2019, ALJ Shoemake issued Order No. 19-UI-127601, allowing claimant's late request for hearing on decision # 100937 but affirming that decision. On April 17, 2019, claimant filed a timely request to reopen the hearing regarding decision # 92845, and a timely application for review of Order No. 19-UI-127601 with the Employment Appeals Board (EAB).

On May 8, 2019, the Department served notice of an administrative decision canceling decision # 92845 by amending it to conclude that claimant was not eligible for Trade Readjustment Act (TRA) benefits

after September 26, 2018 (decision # 162408).<sup>1</sup> Claimant withdrew her request for hearing on decision # 92845, and on May 9, 2019 ALJ Shoemake issued Order No. 19-UI-129637 dismissing claimant's request for hearing on that decision.

**CONCLUSIONS AND REASONS:** Claimant was not overpaid TRA benefits for the weeks from August 12 through September 22, 2018, and is not liable to repay those benefits or have the amount of benefits deducted from any future benefits otherwise payable to her.

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.*

Order No. 19-UI-127601 determined that claimant was overpaid \$2,004 in TRA benefits for the weeks from August 12 through September 22, 2018 because decision # 92845 concluded that claimant was ineligible for TRA benefits after August 8, 2018 and became final and legally binding on December 31, 2018.<sup>2</sup> Order No. 19-UI-127601 concluded that because claimant was not entitled to receive TRA benefits for the period claimed, she must repay those benefits to the Department.<sup>3</sup>

However, decision # 162408 canceled decision # 92845 and amended it to conclude that claimant was not ineligible for TRA benefits until after September 26, 2018. Absent a decision that claimant was ineligible for the benefits she received for the weeks from August 12 through September 22, 2018, claimant was not overpaid TRA benefits for those weeks. Claimant therefore is not liable to repay TRA benefits she received for those weeks, or have the amount of benefits deducted from any future benefits otherwise payable to her.

**DECISION:** Order No. 19-UI-127601 is set aside.

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

**DATE of Service:** May 21, 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

---

<sup>1</sup> We take notice of this information, which is contained in Department records, under OAR 471-041-0090(3) (October 29, 2006). A copy of the record containing the information (Administrative Decision # 162408) is attached to this decision and admitted into evidence as EAB Exhibit 1. Any party that objects to the admission of EAB Exhibit 1 must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, EAB Exhibit 1 will remain in the record.

<sup>2</sup> Order No. 19-UI-127601 at 3.

<sup>3</sup> Order No. 19-UI-127601 at 4.

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.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.



# 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**

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 الاستئناف 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.

**Employment Appeals Board - 875 Union Street NE | Salem, OR 97311**  
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711  
[www.Oregon.gov/Employ/eab](http://www.Oregon.gov/Employ/eab)

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.