

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0720-R

Request for Reconsideration Denied
EAB Decision 2019-EAB-0720 Remains Undisturbed
Claimant is Liable to Repay \$1,904 to the Department

PROCEDURAL HISTORY: On December 4, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from September 23 to December 1, 2018 (decision # 70416). Claimant filed a timely request for hearing. On January 16, 2019, ALJ Frank conducted a hearing, and on January 18, 2019 issued Order No. 19-UI-123061, concluding claimant was not available for work from September 23, 2018 through January 12, 2019. On February 4, 2019, claimant filed an application for review with the Employment Appeals Board (EAB). On March 6, 2019, EAB issued Appeals Board Decision 2019-EAB-0117, affirming Order No. 19-UI-123061. On April 5, 2019, Appeals Board Decision 2019-EAB-0117 became final without claimant having filed a petition for judicial review with the Court of Appeals.

On June 18, 2019, the Department served notice of an administrative decision assessing a \$1,904 overpayment based on Appeals Board Decision 2019-EAB-0117 (decision # 134738). Claimant filed a timely request for hearing. On July 24, 2019, ALJ Murdock conducted a hearing, and on July 25, 2019 issued Order No. 19-UI-134001, affirming decision # 134738. On August 5, 2019, claimant filed an application for review of Order No. 19-UI-134001 with EAB. On September 11, 2019, EAB issued Appeals Board Decision 2019-EAB-0720, affirming Order No. 19-UI-134001. On September 30, 2019, claimant filed a request for reconsideration of Appeals Board Decision 2019-EAB-0720 with EAB.

This decision is issued pursuant to EAB's authority under ORS 657.290(3).

CONCLUSIONS AND REASONS: Claimant's request for reconsideration is denied.

"Any party may request reconsideration to correct an error of material fact or law, or to explain any unexplained inconsistency with Employment Department rule, or officially stated Employment Department position, or prior Employment Department practice." ORS 657.290(3); OAR 471-041-0145(1) (May 13, 2019). The request is subject to dismissal unless it includes a statement that a copy was provided to the other parties, and is filed on or before the 20th day after the decision sought to be reconsidered was mailed. OAR 471-041-0145(2).

Claimant filed a timely request for reconsideration within 20 days of the date EAB Decision 2019-EAB-0720 was mailed. Claimant was not required to declare that a copy of the request for reconsideration was provided to any other parties. Claimant therefore satisfied the procedural requirements for requesting reconsideration.

Claimant requested reconsideration alleging that EAB erred when making EAB Decision 2019-EAB-0720 because EAB did not “include[] or mention[]” the documents claimant had spent a lot of time and effort to prepare, and submitted in accordance with EAB’s rules. Claimant also stated that EAB erred by not specifically addressing his request to have a new live hearing about his availability for work, attended by firsthand witnesses from the Department to explain why the Department initially paid and then denied payment on claimant’s claim. Claimant’s requests do not establish that EAB made an error of fact or law, however, and his request for reconsideration therefore is denied for the reasons that follow.

First, EAB Decision 2019-EAB-0720 did not fail to include or mention the documents claimant submitted, and specifically addressed claimant’s submissions in the third paragraph on page 1 of that decision. The problem was that the documents claimant submitted to EAB were not relevant or material to the issue EAB had jurisdiction to decide in this case.

As explained on page 2 of EAB Decision 2019-EAB-0720, the issue of whether or not claimant was available for work from September 30, 2018 to November 24, 2018 (weeks 40-18 through 47-18) was already decided in a previous case. The decisions in that case are final, and claimant does not have any procedural rights remaining with respect to that issue. It is settled as a matter of law that claimant was not available for work during those weeks.

EAB therefore does not, and did not at the time EAB Decision 2019-EAB-0720 was issued, have jurisdiction to decide whether or not claimant was available for work during those weeks. The only issues EAB had jurisdiction over were 1) whether claimant received benefits during weeks in which he has already been deemed ineligible to receive benefits, and 2) whether claimant should be required to repay the benefits he received during those weeks.

Because it is settled as a matter of law that claimant was not eligible for benefits during the weeks at issue in this case, EAB does not and did not have jurisdiction to re-decide his eligibility. Therefore, the portions of the argument and documents claimant provided to EAB that focused on his availability were not considered by EAB. EAB did not err in rejecting those portions of the documentation and statement claimant provided. While EAB did consider all portions of the documentation and statement that addressed whether benefits were paid to claimant, and whether he should be required to repay them, EAB did not err in limiting its consideration of claimant’s statement and documentation to the portions that pertained to the only questions over which EAB had jurisdiction in this case.

To the extent the original statement and documentation claimant provided to EAB, and the request for reconsideration claimant filed with EAB, requested a new hearing about claimant’s availability, that the hearing be conducted in-person, and for the Department witnesses who originally adjudicated his availability to appear at such a hearing, claimant’s requests are denied. As already explained herein, EAB does not have jurisdiction over that issue. Additionally, claimant does not have a right to such

proceedings. Claimant has already had a hearing and all the administrative process he was due on the issue of his availability. That case ended in March 2019 and became final almost six months ago, in April 2019. That case is over, and claimant does not have any rights to additional hearings or process in that case. Therefore, to the extent claimant's request for reconsideration alleges that EAB erred in EAB Decision 2019-EAB-0720 by failing to order such a hearing, EAB did not err. EAB only had jurisdiction to decide the overpayment and repayment matters presented in this case, and did so.

Claimant has not identified an EAB error of fact or law that necessitates EAB reconsider EAB Decision 2019-EAB-0720. Claimant's request for reconsideration therefore is denied, and EAB Decision 2019-EAB-0720 remains undisturbed.

DECISION: Claimant's request for reconsideration is denied. EAB Decision 2019-EAB-0720 remains undisturbed.

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

DATE of Service: October 10, 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 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 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 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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