

**EMPLOYMENT APPEALS BOARD DECISION**  
**2020-EAB-0313**

*Late Application for Review Dismissed*

**PROCEDURAL HISTORY:** On August 10, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant willfully made misrepresentations and failed to report material facts to obtain benefits, and assessing a \$2,891 overpayment, a \$867.30 monetary penalty, and 20 penalty weeks (decision # 200837). Claimant filed a timely request for hearing. On September 22, 2017, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for October 6, 2017. On October 5, 2017, claimant withdrew his request for hearing on decision # 200837, and on October 6, 2017 ALJ S. Lee issued Order No. 17-UI-94022, dismissing claimant's request for hearing based on claimant's withdrawal request. On October 26, 2017, Order No. 17-UI-94022 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On April 9, 2020, claimant filed a late application for review of Order No. 17-UI-94022 with EAB.

**EVIDENTIARY MATTER:** In addition to claimant's written argument, EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is OAH's record of claimant's October 5, 2017 telephone request to withdraw his request for hearing on decision # 200837, and has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. Any party that objects to our admitting 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(2). Unless such objection is received and sustained, the exhibit(s) will remain in the record.

**FINDINGS OF FACT:** (1) On October 5, 2017, claimant contacted OAH by telephone to withdraw his request for hearing. Before claimant withdrew his request for hearing, an OAH representative discussed

with claimant the content of decision # 200837 and the effect it would have on future benefits if the decision remained in effect. EAB Exhibit 1.

(2) On October 6, 2017, OAH mailed Order No. 17-UI-94022, dismissing claimant's request for hearing on decision # 200837, to claimant at his address of record with the Department. Order No. 17-UI-94022 stated, "You may appeal this decision by filing the attached form Application for Review with the Employment Appeals Board within 20 days of the date that this decision is mailed." Order No. 17-UI-94022 at 1.

**CONCLUSIONS AND REASONS:** Claimant's late application for review of 17-UI-94022 is dismissed.

An application for review is timely if it is filed within 20 days of the date that OAH mailed the decision for which review is sought. ORS 657.270(6); OAR 471-041-0070(1) (May 13, 2019). The 20 day filing period may be extended a "reasonable time" upon a showing of "good cause." ORS 657.875; OAR 471-041-0070(2). "Good cause" means that factors or circumstances beyond the applicant's reasonable control prevented timely filing. OAR 471-041-0070(2)(a). A "reasonable time" is seven days after the circumstances that prevented the timely filing ceased to exist. OAR 471-041-0070(2)(b). A late application for review will be dismissed unless it includes a written statement describing the circumstances that prevented a timely filing. OAR 471-041-0070(3).

ORS 657.270(6) required claimant's application for review to be filed by October 26, 2017. Claimant filed his application for review on April 9, 2020, making the application for review late.

While claimant's written argument described his poor financial circumstances, the reason he withdrew his request for hearing in 2017, and his desire "to plead [his] case to a judge" in 2020, it did not describe any circumstances that prevented a timely filing of an application for review of Order No. 17-UI-94022 by October 26, 2017. Written Argument at 1. In explaining why he withdrew his request for hearing on decision # 200837 in 2017, however, claimant stated: "[A]ll of my hours had not been properly reported," and, "I spoke at length with people in your department about my wrongdoing and wanting to just be done with the process and pay my repayment and penalty fees." Written Argument at 1. From those statements, it reasonably may be inferred that claimant's reason for withdrawing his hearing request on October 5, 2017 was the same reason claimant chose not to file a timely application for review of Order No. 17-UI-94022. Viewed objectively, wanting to "be done with the process" and accept the overpayment and penalties the decision imposed were not "factors or circumstances beyond claimant's reasonable control" that prevented the timely filing of an application for review of Order No. 17-UI-94022.

Accordingly, because "good cause" has not been shown, claimant's late application for review of Order No. 17-UI-94022 must be dismissed, leaving that order undisturbed.

**DECISION:** The application for review filed April 9, 2020 is dismissed. Order No. 17-UI-94022 remains undisturbed.

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

**DATE of Service: April 30, 2020**

**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 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 ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄຳຕັດສິນນີ້.

**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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