

**EMPLOYMENT APPEALS BOARD DECISION**  
**2020-EAB-0508**

*Reversed*  
*Late Request for Hearing Allowed*  
*Merits Hearing Required*

**PROCEDURAL HISTORY:** On May 1, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant willfully made misrepresentations and failed to report material facts to obtain benefits, and assessing a \$1,233 overpayment, a \$246.60 monetary penalty and a 52 week disqualification from future benefits (decision # 210565). On May 21, 2018, decision # 210565 became final without claimant having filed a request for hearing.

On May 18, 2020, claimant filed a late request for hearing. On June 10, 2020, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for June 24, 2020 to consider whether claimant's late request for hearing should be allowed and, if so, the merits of decision # 210565. On June 24, 2020, ALJ Murdock conducted a hearing at which the employer failed to appear, and on June 25, 2020 issued Order No. 20-UI-151513, dismissing claimant's late request for hearing, leaving decision # 210565 undisturbed. On June 25, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant did not declare that they provided a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented them from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

**FINDINGS OF FACT:** (1) On May 1, 2018, the Department mailed decision # 210565 to claimant's address of record on file with the Department. Decision # 210565 stated that an appeal of the decision had to be filed by May 21, 2018 to be timely. The decision was not returned to the Department as undeliverable, but claimant did not receive it. Exhibit 2; Audio Record at 10:00 to 14:00.

(2) Claimant worked during the weeks referenced in the decision and did not claim benefits for those weeks. Exhibit 2. Without claimant's knowledge or consent, claimant's roommate at that time claimed

benefits in claimant's name, received claimant's mail, including the ReliaCard on which the unemployment insurance benefits were loaded, and used the benefits received in claimant's name. Audio Record at 12:40 to 14:00. Claimant's roommate at the time also opened accounts with various retailers, banks and government agencies in claimant's name without her knowledge and consent. Exhibit 2.

(3) Beginning in June 2018, the Department mailed monthly billing statements regarding the amount owed to it to claimant at her address of record on file with the Department. Claimant did not receive any of the billing statements.

(4) On September 24, 2018, claimant's residence was raided by the Junction City police department and the United States Drug Enforcement Administration (DEA), and her roommate arrested. Mail addressed to claimant and other individuals was found in her roommate's possession and confiscated. Claimant's roommate was later charged with various crimes based on her fraudulent and drug-related activity.

(5) On October 2, 2018, claimant moved in with her parents. In October 2018, the Department garnished claimant's wages to collect the overpaid benefits and monetary penalty. Department records show that on October 17, 2018, claimant spoke with a Department representative by telephone about the garnishment and was informed about the balance still owed. Department records do not show that the representative notified claimant that there was an underlying and appealable decision on which the overpayment was based. Claimant did not recall the conversation but was going through mental and emotional trauma at the time due to her daughter's death in early September 2018. The Department continued to garnish claimant's wages until late January 2019 when the balances assessed were fully recovered.

(6) In March 2020, claimant was laid off from her employment as a result of the Covid-19 pandemic and filed a claim for unemployment insurance benefits online. When claimant checked on the status of her claim, the online system indicated that the claim had been denied.

(7) Claimant attempted to contact the Department by phone and was not successful until May 17, 2020. On that day, a Department representative informed claimant that her claim had been denied and spoke with her about "an administrative hearing from 2018" that caused the denial. Audio Record at 18:00 to 19:00. On May 18, 2020, claimant submitted a request for hearing on decision # 210565.

**CONCLUSIONS AND REASONS:** Claimant's late request for hearing on decision # 210565 is allowed. Claimant is entitled to a hearing on the merits of that decision.

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 the decision 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.

Order No. 20-UI-151513 concluded that claimant failed to show good cause for her late request for hearing and that her hearing request was subject to dismissal, reasoning:

Claimant testified that she did not receive the administrative decision or the billing statements and implied that her roommate, who was arrested in September 2018 for drugs and other crimes, had intercepted her mail from the Department. To whatever extent claimant did not know about the Department's action in May 2018 or the months following, ... she knew about the Department's actions by October 2018. At that time, she contacted the Department about the overpayment balance following the Department's action to collect overpaid benefits via wage garnishments. At the very least, she knew the Department had compelled her to repay benefits and she did not pursue an appeal until May 18, 2020.

Order No. 20-UI-151513 at 3. However, the order's conclusion is not supported by the record.

The deadline for claimant to file a timely request for hearing on decision # 210565 expired on May 21, 2018. Because claimant's request for hearing was not filed until May 18, 2020, the request was late.

Claimant's testimony that she did not receive decision # 210565 was undisputed, as was the evidence that claimant's roommate had been intercepting her mail from the Department for some time. That evidence showed that claimant's roommate had engaged in a wide range of fraudulent activity involving claimant and others until at least September 24, 2018, when claimant's mail and a Department issued ReliaCard in claimant's name was found in her roommate's possession by state and federal law enforcement personnel who had raided their residence and arrested the roommate. Exhibit 2; Audio Record at 10:00 to 12:30. More likely than not, claimant had good cause for not requesting a hearing on decision #210565 by the May 21, 2018 deadline because it was beyond claimant's reasonable control to anticipate that a roommate was fraudulently claiming benefits and opening credit accounts in claimant's name, then intercepting claimant's mail to appropriate the cards applied for and avoid detection.

The next issue concerns when claimant first became aware of decision # 210565, which affects the determination regarding whether she filed her request for hearing within a reasonable time. Claimant asserted that she did not become aware of the decision or at least its effects until May 17, 2020. Claimant explained that in March 2020, she was laid off from her employment as a result of the Covid-19 pandemic and filed a claim for unemployment insurance benefits online and, when she later checked on the status of her claim, the online system indicated that the claim had been denied. Claimant then attempted to contact the Department by phone to determine why, and was not successful until May 17, 2020, when a Department representative informed her that "an administrative hearing from 2018" had caused the denial.

There is no dispute that in October 2018, the Department garnished claimant's wages to collect the overpaid benefits, and Department records show that on October 17, 2018, claimant spoke with a Department representative by telephone about the garnishment of her wages and was informed about the balance still owed. However, Department records of the October 17, 2018 conversation do not show that the representative notified or discussed with claimant that there was an underlying and appealable decision on which the overpayment was based. And although the Department sent updated billing statements to claimant at her address of record on November 7, 2018, December 5, 2018 and January 2, 2019, claimant never received them, as she had moved from that address to her parents' residence on October 2, 2018. Claimant's assertion that she was unaware of decision #210565 until May 17, 2020 therefore is both plausible and credible. More likely than not, claimant did not become aware of decision #210565 or its effects until May 17, 2020.

The remaining issue is whether claimant filed her request for hearing within a reasonable time after she first learned that an overpayment and penalties decision had been issued. The circumstances that prevented a timely filing ceased to exist on May 17, 2020, when claimant was informed by a Department representative about “an administrative hearing from 2018” that caused the denial of her new claim. On May 18, 2020, claimant submitted a late request for hearing on decision # 210565, which was less than seven days after the circumstances that prevented a timely filing ceased to exist. Claimant therefore filed her request for hearing within a reasonable time.

Claimant’s late request for hearing on decision # 210565 is allowed. Claimant is entitled to a hearing on the merits of that decision.

**DECISION:** Order No. 20-UI-151513 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service: July 15, 2020**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 20-UI-151513 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need 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 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 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.