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State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0512

Order No. 20-UI-147258 Affirmed – Late Request for Hearing Dismissed
Order No. 20-UI-147259 Affirmed – Repay \$569.99 Overpayment

PROCEDURAL HISTORY: On October 8, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not eligible for TRA benefits because he ceased participation in his training program without justifiable cause on June 24, 2019 (decision # 121607). On October 28, 2019, decision # 121607 became final without claimant having filed a timely request for hearing.

On February 10, 2020, the Department issued notice of another administrative decision, based on decision # 121607, concluding that the Department overpaid \$569.99 in TAA benefits on claimant's behalf, and that claimant was required to repay that amount to the Department (decision # 130114). On March 2, 2020, claimant filed a late request for hearing on decision # 121607 and a timely request for hearing on decision # 130114.

On March 26, 2020, ALJ Frank conducted a consolidated hearing. On April 1, 2020, the ALJ issued Order No. 20-UI-147258, dismissing claimant's late request for hearing on decision # 121607, and Order No. 20-UI-147259, affirming decision # 130114. On April 15, 2020, claimant filed timely applications for review of both orders with the Employment Appeals Board (EAB), which were received on July 8, 2020.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 20-UI-147258 and 20-UI-147259. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2020-EAB-0512 and 2020-EAB-0513).

EAB considered claimant's written argument when reaching this decision.

FINDINGS OF FACT: (1) On July 31, 2018, claimant filed an initial claim for unemployment insurance benefits.

(2) On December 17, 2018, the Department approved claimant to participate in the Trade Adjustment Assistance (TAA) program and to receive Trade Readjustment Allowance (TRA) benefits, which included payment by the Department for claimant's costs to obtain a procurement management certificate from Chemeketa Community College.

(3) Claimant enrolled in a Summer 2019 class at Chemeketa Community College. The Department paid, on claimant's behalf, \$569.99 so he could attend the class, including \$364.00 for tuition, \$38.99 for books, and \$167.00 for fees. Claimant did not attend the class the Department had paid for him to attend.

(4) On June 24, 2019, claimant ceased participating in his TAA program approved training.

(5) On October 8, 2019, the Department issued notice of decision # 121607 and mailed it to claimant's address of record with the Department. Claimant did not receive decision # 121607.

(6) In mid-October 2019, claimant spoke with a Department employee who functioned as claimant's TAA program counselor. The counselor told claimant that his participation in the TAA program was being terminated.

(7) By mid-February 2020, claimant received notice of decision # 130114 in the mail. Decision # 130114 stated, "Claimant was mailed a training termination decision on October 8, 2019, removing the claimant from TAA approved training effective June 24, 2019 because claimant ceased participation."

CONCLUSIONS AND REASONS: Claimant's late request for hearing is dismissed; claimant is liable to repay \$569.99 to the Department.

Late request for hearing on decision # 121607. 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.

Although claimant did not recall receiving notice of decision # 121607 in the mail, he received verbal notice of that decision during a mid-October 2019 call with his TAA program counselor, in which the counselor told claimant that his TAA program benefits were being terminated. Claimant nevertheless did not request a hearing at that time. A mid-October 2019 request for hearing would, more likely than not, have been timely. Claimant therefore did not establish good cause to extend the filing period.

Even if he had not had notice of decision # 121607 in mid-October 2019, claimant received an additional notice of that decision through his receipt of decision # 130114 in the mail, because decision # 130114 specifically referenced it. The circumstances that prevented claimant's timely filing on decision # 121607 therefore would have ceased upon his receipt of decision # 130114. Decision # 130114 was mailed to claimant on Monday, February 10, 2020, and it was likely delivered to him by the U.S. Postal Service within one to three business days of that date, by approximately Thursday, February

13, 2020.¹ Claimant therefore would have had to file his late request for hearing within the seven-day “reasonable time” period, or by February 20th. However, claimant did not file his late request for hearing on decision # 121607 until eleven days later, on March 2, 2020. Claimant therefore did not meet the “reasonable time” requirement.

Because claimant did not show good cause for the late request for hearing on decision # 121607, and, even if he had, did not meet the seven-day “reasonable time” requirement, claimant’s late request for hearing on decision # 121607 must be dismissed.

Decision # 121607, terminating claimant’s enrollment in the TAA program, remains undisturbed.

Overpayment. Individuals who were initially approved to participate in the TAA program, but ceased participating in the program and received benefits they were not entitled to, are liable to repay the overpaid benefits to the Department. *See* 20 C.F.R. § 617.55(a)(1).

In this case, the Department paid \$569.99 on claimant’s behalf to Chemeketa Community College to support claimant’s enrollment in approved training that he did not ultimately take. Because claimant did not attend the training the Department paid for, the \$569.99 was overpaid on claimant’s behalf, and claimant is liable to repay it to the Department.

Conclusion. Claimant’s late request for hearing on decision # 121607 is dismissed, and claimant is required to repay \$569.99 to the Department.

DECISION: Order Nos. 20-UI-147258 and 20-UI-147259 are affirmed.

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

DATE of Service: July 9, 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. 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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¹ EAB has taken notice that First-Class Mail delivered through the U.S. Postal Service typically takes 1-3 business days to arrive at its destination. That fact is generally cognizable. OAR 471-041-0090(1) (May 13, 2019). A copy of the information is available at <https://www.usps.com/ship/mail-shipping-services.htm>. Any party that objects to our taking notice of this information 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 noticed fact will remain in the record.

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 ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄໍາຕັດສິນນີ້.

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.

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