

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0221

Affirmed
Overpayment Assessed

PROCEDURAL HISTORY: On October 6, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work and was therefore ineligible to receive unemployment insurance benefits for the weeks including April 5, 2020 through April 18, 2020 (decision # 70631). On October 26, 2020, decision # 70631 became final without claimant having filed a timely request for hearing. On November 19, 2020, the Department served notice of an administrative decision, based in part on decision # 70631, concluding that claimant was overpaid \$574 in regular benefits and \$1,200 in Federal Pandemic Unemployment Compensation (FPUC) that claimant was required to repay to the Department (decision # 143341). On November 21, 2020, claimant filed a late request for hearing on decision # 70631 and a timely request for hearing on decision # 143341. On February 8, 2021, the Office of Administrative Hearings (OAH) served notice of a hearing on decision # 143341 and to consider claimant's late request for hearing on decision # 70631 and, if allowed, the merits of that decision. On February 26, 2021, ALJ Monroe conducted a hearing, and on March 5, 2021 issued Order No. 21-UI-162207, dismissing claimant's request for hearing on decision # 70631 as late without a showing of good cause. Also on March 5, 2021 ALJ Monroe issued Order No. 21-UI-162210, modifying decision # 143341 to conclude that claimant was overpaid \$574 in regular benefits and was liable to repay \$287 of those benefits to the Department and to have \$287 of those benefits deducted from future benefits otherwise payable to claimant; and that claimant was overpaid \$1,200 in FPUC benefits that claimant was required to repay to the Department. On March 25, 2021, claimant filed an application for review of Orders No. 21-UI-162207 and No. 21-UI-162210 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 21-UI-162207 and 21-UI-162210. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2021-EAB-0222 and 2021-EAB-0221).

Based on a *de novo* review of the entire consolidated record, and pursuant to ORS 657.275(2), Order No. 21-UI-162210, regarding the overpayment of regular and FPUC benefits to claimant, is **adopted**. The remainder of this decision addresses claimant's application for review of Order No. 21-UI-162207.

FINDINGS OF FACT: (1) On October 6, 2020, the Department mailed administrative decision # 70631 to claimant's address of record on file with the Department. The decision stated, in relevant part, "You have the right to appeal this decision if you do not believe it is correct. Your request for appeal must be received by October 26, 2020." Exhibit 1 at 2.

(2) Claimant received decision # 70631 in the regular course of the mail.

CONCLUSIONS AND REASONS: Claimant's late request for hearing on decision # 70631 is dismissed.

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. A letter duly directed and mailed was received in the regular course of the mail. ORS 40.135(1)(q).

On October 6, 2020, the Department mailed decision # 70631 to claimant at their address of record. The 20-day deadline for claimant to file a timely request for hearing was October 26, 2020. Claimant did not file their request for hearing until November 21, 2021. Accordingly, claimant's hearing request on decision # 70631 was late.

The record under review does not show that factors beyond claimant's reasonable control prevented them from filing a timely hearing request on decision # 70631. Although the exact date on which claimant received decision # 70631 at their address of record is unknown, there is a presumption that a letter duly directed and mailed was received in the regular course of the mail. ORS 40.135(1)(q). Nothing in the record serves to rebut that presumption. Claimant's late request for hearing does not show that they did not receive the decision or that they did not receive it until after the October 26, 2020 deadline to request a hearing. Decision # 70631 stated that, to be timely, any appeal from the decision had to be filed on or before October 26, 2020. The decision also provided a mailing address and two telephone numbers for use in contacting the Department. The record fails to show that it was beyond claimant's reasonable control to carefully read decision # 70631, identify the deadline to timely request a hearing, and contact the Department before the October 26, 2020 deadline to file a timely hearing request.

To the extent that claimant's failure to file a timely hearing request was the result of a mistake on claimant's part, the record does not show that the mistake was an "excusable mistake" within the meaning of the administrative rules. The record does not, for example, raise a due process issue, and fails to show that any mistake was the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply.

Because the record does not show that factors beyond claimant's reasonable control or an excusable mistake prevented them from filing a hearing request by the October 26, 2020 deadline, they failed to establish good cause to extend the filing deadline beyond October 26, 2020. Accordingly, their late request for hearing on November 21, 2020 is dismissed, leaving decision # 70631 undisturbed.

DECISION: Orders No. 21-UI-162207 and 21-UI-162210 are affirmed.

S. Alba and D. P. Hettle.

DATE of Service: April 15, 2021

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.

NOTE: This decision denies payment of your Unemployment Insurance (UI) benefits.

However, you may be eligible for Pandemic Unemployment Assistance (PUA) benefits for the period you are not eligible for other benefits as long as you are unable to work, unavailable for work, or unemployed due to the COVID-19 public health emergency. PUA is a new unemployment benefits program available through the Oregon Employment Department in response to the COVID-19 pandemic.

Visit <https://unemployment.oregon.gov> for more information, to apply for PUA, or to contact the Oregon Employment Department using the “Contact Us” form. You can also apply for PUA by calling 1-833-410-1004, but please be aware that the PUA staff cannot answer questions about this decision that denies payment of regular Unemployment Insurance (UI) benefits.

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 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 ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

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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