

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0340

Order No. 22-UI-186817~ Late Application for Review Dismissed
Order No. 22-UI-186963 Affirmed ~ Overpayment Assessed

PROCEDURAL HISTORY: On October 1, 2020, the Oregon Employment Department served notice of an administrative decision concluding that claimant quit work without good cause and was therefore disqualified from receiving unemployment insurance benefits effective February 16, 2020 (decision # 100618). On October 21, 2020, decision # 100618 became final without claimant having filed a request for hearing. On January 15, 2021, the Department served notice of an administrative decision, based in part on decision # 100618, concluding that claimant was overpaid \$17,307 in regular unemployment insurance benefits and \$10,200 in Federal Pandemic Unemployment Compensation (FPUC) benefits (decision # 162030). On January 28, 2021, claimant filed a late request for hearing on decision # 100618 and a timely request for hearing on decision # 162030. On February 4, 2022, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for February 17, 2022 at 1:30 p.m. to consider claimant's late request for hearing on decision # 100618 and, if granted, the merits of that decision. Also on February 4, 2022, OAH served notice of a hearing scheduled for February 17, 2022 at 2:30 p.m. to consider the merits of decision # 162030. On February 17, 2022, ALJ Scott conducted a consolidated hearing on decisions # 100618 and 162030. On February 18, 2022, ALJ Scott issued Order No. 22-UI-186817, dismissing claimant's late request for hearing on decision # 100618 as late without a showing of good cause and leaving decision # 100618 undisturbed. On February 22, 2022, ALJ Scott issued Order No. 22-UI-186963, affirming decision # 162030.

On March 10, 2022, Order No. 22-UI-186817 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On March 12, 2022, claimant filed a late application for review of Order No. 22-UI-186817 and a timely application for review of Order No. 22-UI-186963 with EAB.

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of the postmarked envelope in which claimant submitted her application for review of Order No. 22-UI-186817 to EAB, and the written statement claimant submitted with her application for review of Order No. 22-UI-186817. The additional evidence has been marked as EAB Exhibits 1 and 2, respectively, and a copy

provided to the parties with this decision. Any party that objects to our admitting EAB Exhibits 1 and 2 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 exhibits will remain in the record.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 22-UI-186817 and 22-UI-186963. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2022-EAB-0340 and 2022-EAB-0341).

WRITTEN ARGUMENT: EAB did not consider claimant's written argument when reaching the decision regarding Order No. 22-UI-186817, other than to review it for information describing the circumstances that prevented a timely filing of the application for review, because claimant did not include a statement declaring that she provided a copy of the argument to the opposing party as required by OAR 471-041-0080(2)(a) (May 13, 2019). EAB considered claimant's written argument to the extent it was based on the record in reaching the decision regarding Order No. 22-UI-186963.

EAB reviewed the entire consolidated hearing record. On *de novo* review and pursuant to ORS 657.275(2), Order No. 22-UI-186963 is **adopted**. The remainder of this consolidated decision addresses claimant's application for review of Order No. 22-UI-186817.

FINDING OF FACT: (1) Order No. 22-UI-186817, mailed to claimant on February 18, 2022, 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. 22-UI-186817 at 3. Order No. 22-UI-186817 also stated on its Certificate of Mailing, "Any appeal from this Order must be filed on or before March 10, 2022 to be timely."

CONCLUSIONS AND REASONS: Claimant's late application for review of Order No. 22-UI-186817 is dismissed.

An application for review is timely if it is filed within 20 days of the date that OAH mailed the order 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).

The filing date for an application for review filed by mail is the postmark date affixed to the envelope in which the application was mailed. OAR 471-041-0065(1)(b) (May 13, 2019). The postmark date on the envelope in which claimant mailed her application for review was March 12, 2022; that date is therefore the filing date. EAB Exhibit 1.

The application for review of Order No. 22-UI-186817 was due March 10, 2022. Because claimant did not file her application for review until March 12, 2022, the application for review was late. Claimant provided a written statement with the application for review. EAB Exhibit 2. However, claimant's

written statement did not describe the circumstances that prevented claimant from filing the application for review on time. Accordingly, claimant did not show good cause for the late application for review, and claimant's late application for review of Order No. 22-UI-186817 is dismissed.

DECISION: The application for review of Order No. 22-UI-186817 filed March 12, 2022 is dismissed and Order No. 22-UI-186817 remains undisturbed. Order No. 22-UI-186963 is affirmed.

D. Hettle and A. Steger-Bentz;
S. Alba, not participating.

DATE of Service: April 19, 2022

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 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

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
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