

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0840

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On December 23, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant failed to disclose a material fact and was paid unemployment insurance benefits to which they were not entitled and assessing an overpayment of \$1,346 in regular unemployment insurance (regular UI) benefits, and \$300 in Federal Pandemic Unemployment Compensation (FPUC) benefits (decision # 164834). On January 12, 2022, decision # 164834 became final without claimant having filed a request for hearing. On January 19, 2022, claimant filed a late request for hearing on decision # 164834.

ALJ Kangas considered claimant's request, and on April 18, 2022 issued Order No. 22-UI-191549, dismissing claimant's request for hearing as late and leaving decision # 164834 undisturbed, subject to claimant's right to renew the request by responding to an appellant questionnaire by May 2, 2022. On May 5, 2022, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 22-UI-191549 with the Employment Appeals Board (EAB). On August 1, 2022, ALJ Kangas mailed a letter stating that because claimant's response to the appellant questionnaire was late, it would not be considered, another order would not be issued, and Order No. 22-UI-191549 remained in effect. This matter comes before EAB based upon claimant's May 5, 2022 application for review of Order No. 22-UI-191549.

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is claimant's response to the appellant questionnaire, 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 will remain in the record.

FINDINGS OF FACT: (1) On December 23, 2021, the Department mailed decision # 164834 to claimant's address on file with the Department. The decision stated, in relevant part, "If you disagree

with the amount of the overpayment, you have the right to appeal this decision. Any appeal from this decision must be filed on or before January 12, 2022 to be timely.” Exhibit 1 at 2.

(2) On January 19, 2022, claimant filed a late request for hearing on decision # 164834. Exhibit 2 at 2-3.

CONCLUSIONS AND REASONS: Claimant’s late request for hearing 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.

On December 23, 2021, the Department mailed decision # 164834 to claimant’s address of record on file with the Department. The 20-day deadline for claimant to file a timely request for hearing on decision # 164834 was January 12, 2022. Claimant did not file a request for hearing on decision # 164834 until January 19, 2022. As such, claimant’s request for hearing was late.

The record shows that the appellant questionnaire provided to claimant informed them that the Office of Administrative Hearings (OAH) needed additional information to determine whether they had good cause to file a late request for hearing on “the administrative decision [the Department] mailed to you on December 23, 2021.” EAB Exhibit 1 at 1. In particular, the appellant questionnaire asked claimant the date that they received decision # 164834 and the date that they filed their request for hearing. In their appellant questionnaire response, claimant asserted that they did not receive decision # 164834 until May 5, 2022, and that they filed their request for hearing on that date. EAB Exhibit 1 at 1. However, the record shows that claimant received decision # 164834 (or the information on the overpayment forming the substance of decision # 164834) on or before January 19, 2022 and that it was on January 19, 2022 that claimant filed their request for hearing.

Claimant has offered no explanation in their appellant questionnaire response for the discrepancy between the May 5, 2022 date they claimed to have both received decision # 164834 and filed their late request for hearing, and the record evidence showing that they filed their late request for hearing on January 19, 2022. Furthermore, claimant has offered no explanation in their appellant questionnaire response addressing the circumstances that prevented claimant from timely filing their request for hearing on decision # 164834 on or before the January 12, 2022 deadline for doing so. Under these circumstances, claimant has failed to show that they had good cause to extend the January 12, 2022 filing deadline. Therefore, claimant’s late request for hearing on decision # 164834 is subject to dismissal under ORS 657.875 and OAR 471-040-0010.

DECISION: Order No. 22-UI-191549 is affirmed.

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

DATE of Service: August 4, 2022

NOTE: This decision affirms an order regarding an overpayment of benefits. The Department may defer recovery or completely waive the overpaid amount if certain standards are met. To make a request for Waiver of Overpayment Recovery, call 503-947-1995, go online to www.workinginoregon.org/opay, or email OED_Overpayment_unit@employ.oregon.gov.

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.

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 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.

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

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.