

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0876

Late Application for Review Dismissed

PROCEDURAL HISTORY: On March 23, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was overpaid \$2,874 in Regular Unemployment Insurance Benefits and must repay this amount to the Department, that claimant was overpaid \$9,600 in Federal Pandemic Unemployment Compensation benefits and must repay this amount to the Department, and that claimant was overpaid \$1,510 in Pandemic Emergency Unemployment Compensation benefits and must repay this amount to the Department (decision # 120547). Claimant filed a timely request for hearing. On April 27, 2022 and May 19, 2022, ALJ Janzen conducted a hearing, and on May 20, 2022 issued Order No. 22-UI-194188, affirming decision # 120547. On June 9, 2022, Order No. 22-UI-194188 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On August 8, 2022, claimant filed a late application for review 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 is the written statement claimant provided with their application for review of Order No. 22-UI-194188, 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.

FINDING OF FACT: (1) Order No. 22-UI-194188, mailed to the claimant on May 20, 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-194188 at 7. Order No. 22-UI-194188 also stated on its Certificate of Mailing, “Any appeal from this Order must be filed on or before June 9, 2022 to be timely.”

CONCLUSIONS AND REASONS: The claimant’s late application for review of Order No. 22-UI-194188 is dismissed.

An application for review is timely if it is filed within 20 days of the date that the Office of Administrative Hearings (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 application for review of Order No. 22-UI-194188 was due by June 9, 2022. Because the claimant did not file her application for review until August 8, 2022, the application for review was late. Claimant provided a written statement with her late application for review. In claimant’s written statement, claimant asserts that she did not file a timely application for review because “I did not know that I had that right to have this hearings decision reviewed again. I spoke with an attorney yesterday, August 4th and was explained that I have a right for further review.” EAB Exhibit 1. Claimant’s written statement also asserts she had a baby on May 5, 2022, a little over a month before the order became final on June 9, 2022, and states “I have not had the capacity until now to look further and speak with an attorney.” EAB Exhibit 1. However, Order No. 22-UI-194188 included an attached form Application for Review with the Employment Appeals Board and stated that claimant could file an appeal of the decision within 20 days. Order No. 22-UI-194188 at 7. While it is understandable that claimant may have wanted to seek the advice of an attorney and having a baby may have made it more challenging for claimant, claimant’s written statement did not describe circumstances that constituted good cause for filing the application for review nearly two months after Order No. 22-UI-194188 became final. Accordingly, claimant did not show good cause for the late application for review, and claimant’s late application for review is dismissed.

DECISION: The application for review filed August 8, 2022 is dismissed. Order No. 22-UI-194188 remains undisturbed.

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

DATE of Service: August 29, 2022

NOTE: 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 or email OED_Overpayment_unit@employ.oregon.gov . You must submit waiver applications that correspond to the program for which you were overpaid benefits. If you were overpaid benefits under both state and federal benefits programs you will need to file two separate waiver applications. To access a State UI Overpayment Waiver application go online to <https://unemployment.oregon.gov/waivers> and click the link for “State UI Overpayment Waiver”. To access a Federal Program Overpayment Waiver application go online to <https://unemployment.oregon.gov/waivers> and click the link for “Federal Program Overpayment Waiver”.

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 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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