

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0530

Late Application for Review Dismissed

PROCEDURAL HISTORY: On June 21, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing an overpayment of \$17,492 in combined regular unemployment insurance (regular UI), Federal Pandemic Unemployment Compensation (FPUC), and Lost Wages Assistance (LWA) benefits that claimant was required to repay, a \$2,353.80 monetary penalty, and a 52-week penalty disqualification from future benefits. Claimant filed a timely request for hearing. On September 9, 2022, ALJ Janzen conducted a hearing at which employer Avamere at Chestnut Lane failed to appear. On September 14, 2022, ALJ Janzen issued Order No. 22-UI-202608, modifying the June 21, 2021 administrative decision by concluding that claimant was overpaid \$17,492 in combined regular UI, FPUC, and LWA benefits that she was required to repay, but that claimant did not make a willful misrepresentation to obtain benefits, and therefore was not liable for a monetary penalty or a penalty week disqualification. On October 4, 2022, Order No. 22-UI-202608 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On September 9, 2025, claimant filed a late application for review of Order No. 22-UI-202608 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 claimant's written statement enclosed with the late application for review, has been marked as EAB Exhibit 1, and provided to the parties with this decision. Any party that objects to EAB taking notice of this information must send their objection to EAB in writing, stating why they object, within ten days of EAB mailing this decision. OAR 471-041-0090(2). Unless EAB receives and agrees with the objection, the exhibit will remain in the record.

FINDINGS OF FACT: (1) Order No. 22-UI-202608, mailed to claimant on September 14, 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-202608 at 8. Order No. 22-UI-202608 also stated on its Certificate of Mailing, “Any appeal from this Order must be filed on or before October 4, 2022 to be timely.”

(2) The overpayment assessed by the June 21, 2021 administrative decision was based partly on a finding that claimant had failed to accurately report a work separation, and that an administrative decision issued on June 17, 2020 had found that work separation to be a quit that disqualified claimant from receiving benefits. Exhibit 1 at 3.

CONCLUSIONS AND REASONS: Claimant’s late application for review of Order No. 22-UI-202608 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 ended. 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-202608 was due by October 4, 2022. Because claimant did not file her application for review until September 10, 2025, the application for review was late. In her statement enclosed with the application for review, claimant explained that during the hearing, she “wasn’t able to make a case for if [she] had quit for a covid related reason [because] the judge said that the hearing was to determine if [claimant] was intentionally lying to receive benefits[.]” EAB Exhibit 1 at 1. Claimant further explained that she was “under the impression that [she] was waiting to receive information for a hearing to determine whether or not [she] had quit for a covid related reason which [she] never did end up getting.” EAB Exhibit 1 at 1.

Claimant did not allege in the statement above that she did not receive a copy of the order under review, or that she was in some other fashion prevented from filing a timely application for review. Instead, the above statement suggests that claimant believed that she was waiting on notice of a hearing on the underlying voluntary quit decision which led, in part, to the overpayment at issue in this matter.¹² To the

¹ Office of Administrative Hearing (OAH) records indicate that a separate hearing on the underlying quit decision was convened on September 9, 2022, but that claimant’s request for hearing on that decision was dismissed because she failed to appear for the hearing. A copy of claimant’s application for review in this case was forwarded to OAH as a possible request to reopen the hearing in the other matter. As of the date of this decision, a hearing on the other matter is currently pending before OAH.

² If the underlying quit decision is modified or reversed at hearing or on later appeals, any other administrative decision based on the conclusions of that decision, such as the overpayment decision at issue in this matter, or a denial of an overpayment waiver, may be affected, even if such decisions are under appeal or would otherwise be considered final. The Department should consider whether attempts to recover such an overpayment, while the overpayment’s validity is subject to direct or indirect appellate review, would violate claimant’s right to due process or statutory provisions. *See, e.g.,* ORS 657.310(3);

extent this caused claimant to fail to file a timely application for review in this matter, claimant has not shown that she was prevented from doing so due to factors or circumstances beyond her reasonable control. 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 September 10, 2025 is dismissed. Order No. 22-UI-202608 remains undisturbed.

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

DATE of Service: October 7, 2025

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 stated above**. See ORS 657.282. For forms and information, visit <https://www.courts.oregon.gov/courts/appellate/forms/Pages/appeal.aspx> and choose the appropriate form under "File a Petition for Judicial Review." You may also contact the Court of Appeals by telephone at (503) 986-5555, by fax at (503) 986-5560, or by mail at 1163 State Street, Salem, Oregon 97301.

NOTE: If paying back your overpayment would be a financial hardship, you may request an overpayment waiver. The Department may forgive the debt and stop collection efforts if you meet certain requirements. If you apply for a waiver but do not qualify for the waiver, other relief may be available. Other relief may include a temporary pause in collection efforts or a limit on how much your current benefits may be reduced due to the overpayment. It is important to apply for a waiver as soon as possible because waivers are not retroactive. This means that if the Department grants the waiver, you will not receive a refund of payments you have already made on the overpayment.

The Overpayment Waiver Application is available for download at <https://unemployment.oregon.gov/uploads/docs/FORM129-EN.pdf>

For more information on requesting a waiver go to <https://unemployment.oregon.gov/overpayments>.

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>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.

ORS 657.315(2). See *Casillas v. Gerstenfeld*, No. 22CV18836 (Mult. Co. Cir. Ct. Apr. 5, 2024) Letter Opinion on Cross Motions for Summary Judgment at 11.



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 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 دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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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.