

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0019**

*Affirmed*  
*Late Request for Hearing Dismissed*

**PROCEDURAL HISTORY:** On January 10, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 90359). On January 13, 2017, claimant filed a timely request for hearing. On February 17, 2017, ALJ Snyder conducted a hearing and issued Hearing Decision 17-UI-77253, affirming the Department's decision. On February 24, 2017, claimant filed an application for review with the Employment Appeals Board (EAB). On March 16, 2017, EAB issued EAB Decision 2017-EAB-0224, affirming Hearing Decision 17-UI-77253. On April 14, 2017, claimant filed a petition for judicial review of EAB Decision 2017-EAB-0224 with the Oregon Court of Appeals, and his opening brief. The Oregon Court of Appeals ultimately dismissed claimant's petition for judicial review of EAB Decision 2017-EAB-0224.

On June 6, 2018, the Department served, by mail, notice of an administrative decision based on decision # 90359, concluding that claimant was overpaid \$8,232 in benefits that he must repay the Department (decision # 104323). On November 15, 2018, claimant filed a request for hearing. On November 21, 2018, ALJ Kangas issued Order No. 18-UI-120169, dismissing claimant's request for hearing as late without a showing of good cause, subject to claimant's right to renew his request by responding to an appellant questionnaire by December 5, 2018. On December 11, 2018, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 18-UI-120169 with EAB. On December 17, 2018, ALJ Kangas notified claimant because his response to the appellant questionnaire was late, she would not considering the response or issue another order, and that Order No. 18-UI-120169 remained in effect.

EAB considered the entire hearing record. EAB marked claimant's response to the appellant questionnaire as EAB Exhibit 1 and received it into evidence under OAR 471-041-0090(1) (October 29, 2006), under which exhibits offered but not received into the hearing record may be received into evidence as necessary to complete the record. EAB considered EAB Exhibit 1 when reaching this decision. Any party that objects to our doing so 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(3) (October 29, 2006). Unless such objection is received and sustained, EAB Exhibit 1 will remain in the record.

**FINDING OF FACT:** Decision # 104323 stated that any appeal from the decision had to be filed on or before June 26, 2018 to be timely. Exhibit 1. Claimant did not file a request for hearing on decision # 104323 until after the June 26, 2018 deadline.

**CONCLUSIONS AND REASONS:** Claimant failed to establish that he filed a timely request for hearing on decision # 104323. Claimant's late request for hearing on decision # 104323 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 it is mailed. A request for hearing may be filed on forms provided by the Department or similar offices in other states. OAR 471-040-0005(1) (July 14, 2011). Use of the form is not required provided the party specifically requests a hearing or otherwise expresses a present intent to appeal. *Id.* ORS 657.875 provides that the 20-day filing 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 or circumstances beyond an applicant's reasonable control or an excusable mistake, and defines "reasonable time" as seven days after those factors or factors ceased to exist.

The primary issue in this case is whether claimant filed a timely request for hearing on decision # 104323. Decision # 104323 was mailed on June 6, 2018, and claimant's request for hearing therefore was due by June 26, 2018. Claimant filed a request for hearing on November 15, 2018. With that request, claimant submitted "prior letters sent by Claimant and ignored by OED," including a copy of his January 13, 2017 request for hearing on decision # 90359 and a copy of the opening brief he filed with the Oregon Court of Appeals on April 14, 2017. Exhibit 2. Claimant also included a copy of a letter from him to the Department, dated September 15, 2018, along with an assertion that he did not receive any response to "this request" for hearing. *Id.*

In his response to the appellant questionnaire, claimant stated that he received the June 6, 2018 notice of decision # 104323 on or about June 10, 2018, and filed a request for hearing on November 15, 2018 and two prior occasions. EAB Exhibit 1 at 1. When asked what evidence he had to show when he filed a timely request for hearing, claimant referred to the documents he submitted with his November 15, 2018 request for hearing, asserting that he had submitted multiple requests for hearing over the course of 16 months. *Id.* at 1-2. However, neither claimant's January 13, 2017 request for hearing on decision # 90359 nor his April 14, 2017 opening brief can be construed as a request for hearing on decision # 104323, given that notice of decision # 104323 was not mailed to claimant until June 6, 2018. Nor can claimant's September 15, 2018 letter to the Department be construed as a timely request for on decision # 104323, given that the deadline for filing a request for hearing on that decision was June 26, 2018. Nor did claimant show that he filed any other documents between June 6 and 26, 2018 that amounted to a request for hearing on decision # 104323. Claimant therefore failed to establish that he filed a timely request for hearing on decision # 104323.

The remaining issue is whether claimant established good cause to extend the deadline for filing his request for hearing on decision # 104323 beyond June 26, 2018 and, if so, whether he filed his request for hearing within a reasonable time. However, claimant failed show that factors or circumstances

beyond his reasonable control existing between June 6 and 26, 2018 prevented him from filing his request for hearing by the June 26 deadline. Although claimant's failure to file a timely request for hearing was likely due to a mistake on his part, he failed to show that it was an "excusable" mistake that, for example, raises a due process issue, or was the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply. Finally, claimant failed to show that he filed his request for hearing on decision # 104323 within seven days after any circumstances that prevented a timely filing ceased to exist. Claimant therefore failed to establish good cause to extend the filing deadline beyond June 26, 2018, or that he filed his request for hearing within a reasonable time.

Claimant's late request for hearing on decision # 104323 therefore is dismissed.

**DECISION:** Order No. 18-UI-120169 is affirmed.

D. P. Hettle and S. Alba;  
J. S. Cromwell, not participating.

**DATE of Service: January 8, 2019**

**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](http://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.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have 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 Asuntos Laborales. Si no está de acuerdo con esta decisión, puede presentar una Petición 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.

**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](http://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.