

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0155**

*Late Application for Review Allowed*  
*Order No. 19-UI-122872 Reversed*  
*Request to Reopen Granted*

**PROCEDURAL HISTORY:** On October 2, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, not for misconduct, and that claimant therefore was allowed benefits if otherwise eligible (decision # 150556). On October 22, 2018, the employer filed a timely request for hearing. On October 24, 2018, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for November 6, 2018. On November 6, 2018, ALJ Griffin conducted a hearing at which claimant failed to appear, and on November 7, 2018 issued Order No. 18-UI-119346 concluding that claimant's discharge was for misconduct. On November 20, 2018, claimant filed a timely request to reopen the November 6<sup>th</sup> hearing. On January 14, 2019, ALJ Scott conducted a hearing on claimant's request to reopen the hearing, and on January 17, 2019 issued Order No. 19-UI-122872 denying the request. On February 6, 2019, Order No. 19-UI-122872 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On February 8, 2019, claimant filed a late application for review with EAB.

**FINDINGS OF FACT:** (1) Between October 2, 2018 and the January 14, 2019 hearing, claimant received documents mailed to him by OAH and the Department. He did not receive the notice of hearing mailed to him on October 24, 2018.

(2) Claimant was in the hospital at the time of the January 14, 2019 hearing because of a serious illness that affected his ability to speak and communicate. He testified from his hospital room despite being unable to speak or communicate clearly.

(3) Claimant was hospitalized until February 7, 2019, the day after Order No. 19-UI-122872 became final. He did not have access to the Order until he was released from the hospital. He filed a late application for review the following day.

**CONCLUSIONS AND REASONS:** Claimant's late application for review is allowed. We also disagree with the ALJ and conclude that claimant's request to reopen should be allowed. Claimant is entitled to a hearing on the merits of decision # 150556.

**Late application for review.** ORS 657.270(6) provides that parties have 20 days from the date of an ALJ's order to file an application for review. ORS 657.875 provides that the 20-day deadline may be extended a reasonable time upon a showing of good cause. OAR 471-041-0070(2) defines "good cause" as "factors or circumstances beyond the applicant's reasonable control [that] prevented timely filing," and "a reasonable time" as "seven days after the circumstances that prevented a timely filing ceased to exist."

Claimant was hospitalized or in a rehabilitative facility between the time of his hearing and the day after the ALJ's order became final. During that time he lacked access to the ALJ's order. We infer that he therefore lacked the knowledge that he needed to file an application for review and lacked the means to do so. Those were circumstances beyond claimant's reasonable control; he therefore had good cause to extend the filing period.

The circumstances that prevented a timely filing ceased to exist on February 7, 2019. Claimant filed a late application for review one day later. Claimant's late filing was therefore within the seven-day reasonable time period.

Claimant established good cause to extend the filing period a reasonable time. His late application for review is therefore allowed.

**Request to reopen.** ORS 657.270(5) provides that any party may request to reopen a hearing, and the request will be allowed if it is filed within 20 days after the ALJ's decision was issued and shows "good cause" for failing to appear. OAR 471-040-0040 defines "good cause" as an "excusable mistake" or "factors beyond an applicant's reasonable control."

The ALJ found as fact that claimant filed a timely request to reopen in this case. Order No. 19-UI-122872 at 2. We agree. However, the ALJ also concluded that claimant did not show good cause to reopen the hearing, reasoning that individuals are presumed under Oregon law to have received mail addressed to them, and claimant did not rebut the presumption because he "had no plausible explanation as to why or how he received all other notices related to this matter that were sent to that address but failed to receive the notice of the November 6, 2018 hearing." *Id.* at 4. We disagree that claimant did not rebut the presumption.

The record shows that claimant received other documents mailed to him by OAH and the Department around the time OAH mailed notice of the hearing. Claimant alleged he did not receive it, and could not explain precisely why. However, given that this matter was important enough to claimant that he participated in the reopen hearing from his hospital room while experiencing severe difficulty speaking and communicating, we find it more likely than not that if claimant *had* actually received notice of the

November 6, 2018 hearing, he would have participated in it. We find that claimant has successfully rebutted the presumption that he received the November 6<sup>th</sup> notice of hearing with circumstantial evidence suggesting non-receipt. His non-receipt of the November 6<sup>th</sup> notice was a factor beyond his reasonable control that prevented him from participating in the hearing. He has therefore shown good cause for failing to appear at the hearing, and he is entitled to a hearing on the merits of decision # 150556.

**DECISION:** Order No. 19-UI-122872 is set aside, as outlined above.

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

**DATE of Service:** March 13, 2019

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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 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 ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

**Arabic**

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**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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