

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0484**

*Affirmed*  
*Late Request for Hearing Dismissed*

**PROCEDURAL HISTORY:** On April 10, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant failed to provide the Department with information necessary to process his claim and was therefore denied benefits from March 31, 2019 through April 6, 2019, and until he provided the Department with the information necessary to process his claim. On April 30, 2019, that decision became final without claimant having filed a timely request for hearing. On May 2, 2019, claimant filed a late request for hearing. On May 7, 2019, ALJ Kangas issued Order No. 19-UI-129492, dismissing claimant's late request for hearing subject to his right to renew the request by responding to an appellant questionnaire by May 21, 2019. Claimant did not return a timely response to the questionnaire. On May 22, 2019, claimant filed a late response to the appellant questionnaire and a timely application for review with the Employment Appeals Board (EAB). On May 28, 2019, ALJ Kangas mailed a letter stating that the Office of Administrative Hearings (OAH) would not consider claimant's questionnaire response because he filed it late. This matter is before EAB on claimant's timely May 22<sup>nd</sup> application for review.

**FINDINGS OF FACT:** (1) On March 22, 2019, the Department issued two additional administrative decisions to claimant, one denying him benefits due to a discharge, and the other denying him benefits due to his availability for work. Claimant filed timely requests for hearing on both decisions, and on April 10, 2019, ALJ Snyder conducted two administrative hearings.<sup>1</sup>

(2) On April 13, 2019, claimant received the Department's April 10<sup>th</sup> decision denying him benefits. That decision stated, "BENEFITS ARE DENIED for the period claimed and until the claimant has provided the information necessary to process the claim . . . If you do not understand this Decision, contact the Unemployment Insurance Center above immediately . . . IF YOU DO NOT AGREE WITH

---

<sup>1</sup> The facts in paragraph 1 are found in Order No. 19-UI-128429, which is marked as EAB Exhibit 2, and 19-UI-128430, which is marked as EAB Exhibit 3. EAB Exhibits 2 and 3 are admitted into evidence as necessary to complete the record. OAR 471-041-0090(1)(a). 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 Exhibits 2 and 3 will remain in the record.

THIS DECISION, SEE THE ENCLOSED INFORMATION FOR YOUR APPEAL RIGHTS . . . Any appeal from this decision must be filed on or before April 30, 2019 to be timely.”<sup>2</sup>

(3) On April 18, 2019, ALJ Snyder served Order No. 19-UI-128429 and Order No. 19-UI-128430, reversing the Department’s March 22, 2019 denials of benefits to claimant.<sup>3</sup> On approximately April 22, 2019, claimant received those orders. Claimant “thought everything was fixed and approved after the appeal hearing . . . so I didn’t know I need to schedule another appeal.”<sup>4</sup> He “thought everything was in the process of being fixed since I was approved for benefits.”<sup>5</sup>

(4) On May 2, 2019, claimant learned that the ALJ orders had not fixed his situation and he was still denied benefits because of the Department’s April 10<sup>th</sup> decision. That day, he filed a late request for hearing.

**CONCLUSIONS AND REASONS:** Claimant’s late request for hearing should be 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. “Good cause does not include: \* \* \* Not understanding the implications of a decision or notice when it is received.” OAR 471-040-0010(1)(b)(B).

Claimant did not file a timely request for hearing on the Department’s April 10<sup>th</sup> decision because he mistakenly believed that the issues preventing him from receiving benefits on his unemployment insurance claim would be or were resolved after the hearings he had in mid-April reversed the Department’s other two benefits denials. It was within claimant’s reasonable control to file a timely request for hearing notwithstanding his confusion, however, and he demonstrated he was capable of filing timely requests for hearing because he had previously managed to file two other timely requests for hearing during his claim.

Although claimant’s belief that his claim issues would be fixed by the April 18<sup>th</sup> hearings he had in other cases, was likely the result of a mistake on claimant’s part, it was not an “excusable mistake” within the meaning of the administrative rules. The April 10<sup>th</sup> decision stated that benefits were denied, and would

---

<sup>2</sup> The April 10<sup>th</sup> administrative decision is marked as EAB Exhibit 1 and admitted into evidence as necessary to complete the record. OAR 471-041-0090(1)(a). 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.

<sup>3</sup> See EAB Exhibits 2 and 3.

<sup>4</sup> The appellant questionnaire is marked as EAB Exhibit 4 and admitted into evidence as necessary to complete the record. OAR 471-041-0090(1)(a). 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 4 will remain in the record.

<sup>5</sup> See EAB Exhibit 4.

continue to be denied until he had taken action with respect to that specific decision, but claimant did not take the required action. The April 10<sup>th</sup> decision stated that if claimant disagreed with the decision he needed to appeal on or before April 30<sup>th</sup>, but he did not do so. Notably, neither of the ALJ orders claimant received on April 22<sup>nd</sup> addressed or resolved the issue of whether claimant had or had not provided the Department with information about his earnings, or lack of earnings, as referenced in the April 10<sup>th</sup> decision.<sup>6</sup> Claimant's mistake therefore did not raise a due process issue, and was not the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply; therefore, it was not an excusable mistake.

Claimant did not show good cause for filing a late request for hearing in this case. His late request for hearing is dismissed, and the Department's April 10<sup>th</sup> administrative decision remains undisturbed.

**DECISION:** Order No. 19-UI-129492 is affirmed.

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

**DATE of Service: June 3, 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.

---

<sup>6</sup> *See* EAB Exhibits 2 and 3.



# 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.