

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0519**

*Reversed and Remanded*

**PROCEDURAL HISTORY:** On March 19, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 83159). On April 8, 2019, decision # 83159 became final without claimant having filed a timely request for hearing. On May 4, 2019, claimant filed a late request for hearing. On May 9, 2019, ALJ Kangas issued Order No. 19-UI-129622, dismissing claimant's late request for hearing subject to claimant's right to renew the request by responding to an appellant questionnaire by May 23, 2019. Claimant did not respond by May 23, 2019. On May 24, 2019, claimant submitted a late response to the appellant questionnaire and filed a timely application for review with the Employment Appeals Board (EAB). On May 31, 2019, claimant filed another application for review with EAB. On June 5, 2019, ALJ Kangas mailed a letter stating that claimant's questionnaire response was late and would not be considered. This matter is before EAB on claimant's May 24<sup>th</sup> timely application for review of Order No. 19-UI-129622.

**EVIDENTIARY MATTER:** Claimant's questionnaire response is admitted into evidence as EAB Exhibit 1 as necessary to complete the record. OAR 471-041-0090(1)(a). A copy has been mailed to the parties with this decision. OAR 471-041-0090(2). Any party who objects to our admitting EAB Exhibit 1 may file a written objection within ten days from the date of this decision. *Id.* Unless such objection is received and sustained, EAB Exhibit 1 will remain in the record.

**FINDINGS OF FACT:** At some point in time after claimant's February 7, 2019 separation from the employer, claimant's husband had a heart attack and required hospitalization. Claimant felt distraught and was under a great deal of stress because of her husband's health. She had difficulty dealing with matters related to her unemployment insurance claim, and she did not thoroughly read the materials mailed to her or call for help.<sup>1</sup>

**CONCLUSIONS AND REASONS:** Order No. 19-UI-129622 is set aside, and this matter remanded for additional proceedings consistent with this order.

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<sup>1</sup> See EAB Exhibit 1 for all facts included in this paragraph.

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, and defines "reasonable time" as seven days after those factors ceased to exist.

Claimant was under a great deal of stress and felt emotionally distraught because of her husband's health. For the reasons she described in EAB Exhibit 1, claimant's preoccupation with her husband's health and her mental state around the time decision # 83159 was issued might be considered factors beyond her reasonable control that prevented her from attending to matters related to her unemployment insurance claim or otherwise caused her to make an excusable mistake. However, the contents of EAB Exhibit 1 are not sufficient to support any decision about that matter. For example, the record does not show what date her husband had the heart attack, how long he was in the hospital, how long he spent recovering from his heart attack, how that affected claimant's ability to attend to personal business matters, and how that affected claimant's mental health at the time. Absent that information, and any related follow-up questions the ALJ deems appropriate, the record does not show whether or not claimant had good cause for the late request for hearing.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary for a determination in this case, Order No. 19-UI-129622 is reversed, and this matter is remanded.

**DECISION:** Order No. 19-UI-129622 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service: June 11, 2019**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 19-UI-129622 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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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 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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