

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0606**

*Reversed*  
*Late Request for Hearing Allowed*  
*Merits Hearing Required*

**PROCEDURAL HISTORY:** On August 23, 2006, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 92542). On September 12, 2006, decision # 92542 became final without claimant having filed a timely request for hearing. On April 26, 2019, claimant filed a late request for hearing. On May 6, 2019, ALJ Kangas issued Order No. 19-UI-129365, dismissing claimant's late request for hearing subject to his right to renew the request by responding to an appellant questionnaire by May 20, 2019. On May 13, 2019, claimant responded to the questionnaire. On June 5, 2019, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 19-UI-129365 was canceled. On June 7, 2019, OAH mailed notice of a hearing scheduled for June 19, 2019. On June 19, 2019, ALJ Logan conducted a hearing, and on June 21, 2019 issued Order No. 19-UI-132049, re-dismissing claimant's late request for hearing. On June 28, 2019, claimant filed a timely application for review of Order No. 19-UI-132049 with the Employment Appeals Board (EAB).

EAB did not consider claimant's written argument when reaching this decision because they did not include a statement declaring that they provided a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019).

**FINDINGS OF FACT:** (1) On May 23, 2006, claimant was arrested for commission of crimes involving dishonesty. He was convicted of some of those crimes, and, thereafter, continuously incarcerated until November 2008.

(2) The Department mailed the August 23, 2006 notice of decision # 92542 to claimant at an address on Brown Avenue in Roseburg, Oregon. Claimant did not receive the decision because he had never resided on Brown Avenue and because he was incarcerated and could not receive mail sent to that address.

(3) In December 2006, the Department issued notice of another decision, based upon decision # 92542, assessing a \$4,160 overpayment and concluding that he was liable for a 26 penalty week disqualification period. Claimant did not receive that decision, either.

(4) In November 2008, claimant was released from prison. He was re-incarcerated from October 27, 2009 to December 21, 2016. During that term of incarceration, the Department mailed a copy of a distraint warrant. The warrant stated that claimant owed a debt to the Department based upon “your delinquent unemployment insurance overpayment” but did not mention decision # 92542, or the overpayment decision, or otherwise inform claimant that the delinquent overpayment was based upon a final administrative decision. Claimant received at least one page of the warrant in 2010 while he was in prison; he did not know what it was about and did not contact the Department about it or make an effort to do so.

(5) In December 2016, claimant was released from prison again. Thereafter, he got a job. On April 18, 2019, the Department mailed a notice of garnishment for a \$10,250.26 debt to claimant’s employer. On approximately April 20, 2019, the employer received the garnishment notice and told claimant about it.<sup>1</sup>

(6) On April 22, 2019, claimant contacted the Department to discuss the garnishment and its cause. During that call, claimant learned of decision # 92542. On April 26, 2019, four days later, claimant emailed the Department to request a hearing on that decision.

**CONCLUSIONS AND REASONS:** Claimant had good cause for the late request for hearing and filed it within a reasonable time. He is entitled to a hearing on the merits of decision # 92542.

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 provides that “good cause” includes factors beyond an applicant’s reasonable control, and defines “reasonable time” as seven days after those factors ceased to exist.

The order under review concluded that although claimant established good cause for the late filing based upon his likely non-receipt of decision # 92542, he was not entitled to a hearing on the merits of that decision because he did not file his late request for hearing within the seven-day reasonable time period. *See* Order No. 19-UI-132049 at 4. The order explained, in essence, that although claimant filed within a reasonable time of when he *actually* learned about decision # 92542 in 2019, since he *could have* learned about the decision in July 2010 and didn’t act within seven days of that event, he did not file within a reasonable time. *Id.* at 4-5. In so concluding, the order noted that, in all likelihood, claimant’s conditions of incarceration would have prevented him from filing a late request for hearing within seven

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<sup>1</sup> First class mail sent through the U. S. Postal Service takes 1-3 business days to arrive at its intended destination. Therefore, a document mailed on April 18, 2019 would be likely to arrive sometime between April 19, 2019 and April 21, 2019. In the absence of a specific receipt date, we conclude that April 20<sup>th</sup> was the likely receipt date. EAB has taken notice of this, which is a generally cognizable fact. OAR 471-041-0090(1). A copy of the information is available to the parties at <https://www.usps.com/ship/mail-shipping-services.htm>. Any party that objects to our taking notice of this information 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(2). Unless such objection is received and sustained, the noticed fact will remain in the record.

days of receiving a copy of the distraint warrant in July 2010 had he tried. *Id.* at 5. In sum, then, the order under review eliminated any possibility of claimant satisfying the seven-day “reasonable time” requirement.

Although the record does show that claimant had good cause for the late filing, the record does not support the order’s conclusion with respect to the reasonable time issue. “A reasonable time” is defined in rule as “seven days after the circumstances that prevented a timely filing ceased to exist.” *See* OAR 471-040-0010(3). The circumstances that prevented a timely filing in this case stemmed from claimant’s lack of knowledge that decision # 92542 was issued or even existed. Logically, the only way that circumstance can cease to exist would be by claimant gaining knowledge that decision # 92542 existed. That did not happen in this case until either April 20<sup>th</sup>, when the employer received the garnishment notice and told claimant about it and why he was being garnished, or April 22<sup>nd</sup>, when claimant followed up with the Department and learned about that decision. Therefore, the seven-day “reasonable time” period in this case did not start running until, at the earliest, April 20<sup>th</sup>. Claimant filed his late request for hearing in this case on April 26<sup>th</sup>, which is within seven days of that date. He therefore established that he filed within “a reasonable time.”

In reaching this decision, it is notable that there is no legal standard stating that “reasonable time” period as defined by OAR 471-040-0010(3) begins to run on the day the circumstances that prevented a timely filing *should have* ceased to exist, nor the day such circumstances *might have* ceased to exist had events occurred differently. The “reasonable time” period only starts when the circumstances actually “ceased to exist.” Therefore, although contacting the Department in July 2010 about the distraint warrant would have been the responsible thing for claimant to do, and although claimant might have found out about decision # 92542 in mid-2010 – and arguably should have – had he done so, it is also unrefuted in this record that he did not. Notably, it is also unrefuted that the warrant itself did not refer to or otherwise indicate the existence of an administrative decision or decisions that had resulted in the warrant, and therefore did nothing to inform claimant that an administrative decision denying him benefits had been issued, or that any administrative decision regarding his claim existed. For all of those reasons, the circumstances that prevented a timely filing in this case could not have ceased to exist in 2010.

Claimant established good cause for the late request for hearing, and filed his late request on August 26<sup>th</sup>, within the seven-day “reasonable time” period after the circumstances that had prevented a timely filing ceased to exist. He is, therefore, entitled to a hearing on the merits of decision # 92542.<sup>2</sup>

**DECISION:** Order No. 19-UI-132049 is set aside, as outlined above.

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

**DATE of Service:** August 1, 2019

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<sup>2</sup> In reaching this decision we considered and accepted the ALJ’s on-the-record statement that his decision to dismiss claimant’s late request for hearing “is also a little bit colored” by the fact that claimant’s “incarceration was almost exclusively for crimes of deceit and dishonesty,” which “does nothing to enhance the credibility of his testimony with regard to the dates, and the information that he received in July of 2010.” Transcript at 55. Where the facts presented by the parties about dates or what was on the distraint warrant claimant received a copy of in July 2010 were in dispute, this decision relied exclusively upon the testimony presented by the Department’s witness.

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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 ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

**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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