

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0641**

*Reversed, Late Request for Hearing Allowed*  
*Revocada, La Petición Tardía Para Una Audiencia Es Permitida*

**PROCEDURAL HISTORY:** On April 9, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not able to work from March 17 through 30, 2019, and therefore denied benefits for that period and until claimant was able to work (decision # 80938). On April 29, 2019, decision # 80938 became final without claimant having filed a request for hearing. On May 10, 2019, claimant filed a late request for hearing. On May 14, 2019, ALJ Kangas issued Order No. 19-UI-129891, dismissing claimant's request for hearing as late without a showing of good cause, subject to claimant's right to renew the request by responding to an appellant questionnaire by May 28, 2019. On May 28<sup>th</sup>, claimant filed a timely response to the appellant questionnaire. On June 5, 2019, the Office of Administrative Hearings (OAH) cancelled and vacated Order No. 19-UI-129891, and on June 6, 2019 served notice of a hearing scheduled for June 19, 2019. On June 19<sup>th</sup>, ALJ Griffin conducted a hearing, and on June 21, 2019 issued Order No. 19-UI-132082, re-dismissing claimant's late request for hearing as without good cause. On July 10, 2019, claimant filed a timely application for review of Order No. 19-UI-132082 with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and claimant's written argument when reaching this decision. Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the portion of the order under review concluding that claimant did not file a timely request for hearing on decision # 80938 is **adopted**. The remainder of the decision addresses whether claimant's late request for hearing should be allowed.

**FINDINGS OF FACT:** (1) On April 9, 2019, the Department mailed notice of decision # 80938 to claimant. As of April 12, 2019, claimant had not yet received the notice, but contacted the Department to check on the status of his claim for benefits. Claimant was advised that there was an administrative decision denying benefits, and that he could request a hearing by email or fax if he did not agree with

the decision. Claimant stated that he would wait until he received the decision in the mail, but that he was able to work and actively seeking work.

(2) Claimant received notice of decision # 80938 a few days later. The notice included an “APPEAL RIGHTS” section stating in English and Spanish:

You have the right to appeal this decision if you do not believe it is correct. Your request for appeal must be received no later than April 29, 2019. This decision **DENIES** benefits. If there are other decisions affecting your eligibility for benefits, you must appeal those decisions(s) separately.

*Do not stop filing for weekly benefits if you are requesting unemployment during the appeal process.*

Exhibit 1 at 2. The notice also included a “HELP” section stating in English and Spanish, “If you do not understand this decision, contact the Unemployment Insurance Center above immediately. Exhibit 1 at 2. Along with the notice of decision # 80938, the Department mailed, and claimant received, a document in English and Spanish entitled, “Appeal Rights and Procedures.”

(3) Claimant did not understand from the notice of decision # 80938 and the Appeal Rights and Procedures document what he needed to email or fax the Department to request a hearing. On April 18, 2019, claimant telephoned the Department and asked about appealing the denial of benefits. A Department representative told claimant he could appeal the weeks for which he was denied, and advised him to get a letter from his doctor stating that he was released to work. Claimant understood the Department representative to mean that he could request a hearing on decision # 80938 by emailing or faxing the Department a work release from his doctor.

(4) That same day, claimant visited his doctor’s office and obtained a letter from his doctor stating that he was cleared for work without restrictions. On April 19, 2019, claimant faxed the letter to the Department, believing that it constituted a request for hearing on decision # 80938. That same day, claimant telephoned the Department and asked a Department representative if the letter had been received. The Department representative told claimant that it had been received and forwarded for review by the Department adjudicator who had issued decision # 80938. Claimant believed he had filed a timely request for hearing on decision # 80938.

(5) On May 6, 2019, claimant telephoned the Department to check on the status of his claim for benefits. A Department representative told claimant that the denial of benefits had been ended, and that the week of April 21 through 27, 2019 would be his waiting week, and that the week of April 28 through May 4, 2019 would be his first paid week. Claimant then realized that the Department did not consider the work release he faxed on April 19<sup>th</sup> a request for hearing on decision # 80938. Claimant filed a late request for hearing on May 10, 2019.

**CONCLUSIONS AND REASONS:** Claimant’s late request for hearing on decision # 80938 is allowed. Claimant is entitled to a hearing on the merits of that decision.

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 15, 2018). Use of the form is not required provided the party specifically requests a hearing or otherwise expresses a present intent to appeal and it can be determined what issue or decision is being appealed. *Id.* A request for hearing may be filed by mail, fax, e-mail, or other means as designated by Department with the appealable document; or in person at any publicly accessible Employment Department office in Oregon. OAR 471-040-0005(2).

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 does not include not understanding the implications of a decision or notice when it is received. OAR 471-040-0010 defines "a reasonable time" as seven days after the circumstances that prevented a timely filing ceased to exist.

Order No. 19-UI-132082 found that the Department mailed claimant an Appeal Rights and Procedures pamphlet with decision # 80938 explaining the appeals process, and that both decision # 80938 and the accompanying pamphlet explained to claimant how he needed to request an appeal.<sup>1</sup> Based on those findings, Order No. 19-UI-13208 reasoned that claimant failed to file a timely request for hearing because he misunderstood the implications of failing to specifically request a hearing in his communications with the Department, which, under OAR 471-040-0010(1)(b)(B), is an insufficient basis to establish good cause.<sup>2</sup> However, the record fails to support that conclusion.

Under OAR 471-040-0010(1)(b)(B), the issue is not whether claimant misunderstood the implications of failing to specifically request a hearing in his communications with the Department, but whether he misunderstood the implications of decision # 80938, or the notice of that decision he received from the Department. Decision # 80938 concluded that claimant was not able to work from March 17 through 30, 2019, and therefore denied benefits for that period and until claimant was able to work. The record shows that claimant understood the implications of that decision. The notice of decision # 80938 did not explain to claimant how he needed to request an appeal, merely that he had the right to appeal the decision, and that a request for appeal had to be received no later than April 29, 2019. The record shows that claimant understood the implications of not appealing the decision by April 29th. And assuming OAR 471-040-0010(1)(b)(B) even applies to the Appeal Rights and Procedures document claimant received, the record fails to show what the document stated, and absent such a showing, fails to establish that claimant misunderstood the implications of the document.

The record therefore fails to support a denial of claimant's late request for hearing under OAR 471-040-0010(1)(b)(B), and the issue is whether claimant established good cause for filing a late request for hearing due to factors beyond his reasonable control or an excusable mistake. The record shows that claimant did not understand from the notice of decision # 80938 and the Appeal Rights and Procedures document what he needed to email or fax the Department to request a hearing, but made substantial efforts to do so by the April 29<sup>th</sup> deadline. On April 18<sup>th</sup>, he contacted the department to ask about appealing the decision and, based on what he was told, visited his doctor's office that same day and

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<sup>1</sup> Order No. 19-UI-132082 at 2, 4.

<sup>2</sup> *Id.* at 4.

obtained a work release that he believed he could submit as a request a hearing. The following day, he faxed the work release to the Department and contacted the Department to confirm that it was received, sincerely believing that he had filed a timely request for hearing. Given substantial efforts to file a timely request for hearing despite not understanding how to do so, his failure to file a timely request for hearing was an excusable mistake. Claimant therefore established good cause for filing a late request for hearing on decision # 80938.

The remaining issue is whether claimant filed his request for hearing within a reasonable time. The circumstances that prevented a timely filing ceased to exist on May 6, 2019, when claimant learned that the Department did not consider the work release he faxed on April 19<sup>th</sup> a request for hearing. Claimant filed his request for hearing on May 10, 2019, which is less than seven days after the circumstances that prevented at timely filing ceased to exist. Claimant therefore filed his request for hearing within a reasonable time.

Claimant's late request for hearing on decision # 80938 therefore is allowed. Claimant is entitled to a hearing on the merits of that decision.

**DECISION:** Order No. 19-UI-132082 is set aside, as outlined above. *La Orden de la Audiencia 19-UI-132082 se deja a un lado, de acuerdo a lo indicado arriba.*

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

**DATE of Service: August 14, 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 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 Empleo. Si no está de acuerdo con esta decisión, puede presentar una Aplicación 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**

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.

**Employment Appeals Board - 875 Union Street NE | Salem, OR 97311**  
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711  
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