

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0693**

*Affirmed*  
*Late Request for Hearing Dismissed*

**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. EAB reviewed the case based upon claimant's May 24<sup>th</sup> timely application for review of Order No. 19-UI-129622, and on June 11, 2019, issued Appeals Board Decision 2019-EAB-0519, reversing and remanding the case to the Office of Administrative Hearings (OAH) for a hearing on claimant's late request for hearing. On June 14, 2019, OAH mailed notice of a hearing scheduled for June 28, 2019. On June 28, 2019, ALJ Shoemake conducted a hearing, and on July 5, 2019 issued Order No. 19-UI-132847, re-dismissing claimant's late request for hearing. On July 25, 2019, claimant filed a timely application for review of Order No. 19-UI-132847 with EAB.

EAB did not consider claimant's written argument when reaching this decision because she did not include a statement declaring that she provided a copy of her argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). Even if we had considered it, the outcome of this case would remain the same for the reasons explained herein.

**FINDINGS OF FACT:** (1) On February 11, 2019, claimant's husband was hospitalized with a potentially fatal heart condition. Between February 11, 2019 and early March 2019, claimant was unable to attend to her normal activities and pay bills because she was emotionally distraught and almost entirely occupied caring for her husband and monitoring his health.

(2) About one month after claimant's husband's hospitalization, in early March 2019, she felt things were starting to return to normal and she began to have the capacity to catch up on her mail and pay overdue bills. On March 5, 2019, she sent the employer a written request for her personnel file.

(3) She received decision # 83159 but did not take notice of the appeal deadline, and wanted to wait until she received the personnel file before responding. Effective April 14, 2019, claimant began to file weekly claims for unemployment insurance benefits, attend to her claim, and seek work. At no point did claimant read or understand the deadlines for requesting a hearing on decision # 83159.

(4) On May 4, 2019, almost three weeks later, claimant 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, and defines "reasonable time" as seven days after those factors ceased to exist.

It appears more likely than not that claimant did not have good cause to file a late request for hearing in this case. Although the events related to her husband's health left her without the capacity to handle her personal business for approximately a month after February 11, 2019, decision # 83159 was not issued in this case until approximately five weeks after her husband's hospitalization, and therefore fell outside the one-month period claimant estimated she was unable to attend to her personal business. The period of time during which claimant testified she was incapacitated and unable to file a request for hearing therefore ended before decision # 83159 was issued and would not have prevented a timely filing. Additionally, decision # 82159 did not become final until almost two months after claimant's husband was hospitalized, which was several weeks after claimant had resumed attending to her personal business, claiming benefits, and seeking work. Claimant did not show good cause to extend the filing period.

Even if claimant had shown good cause, the outcome of this decision would remain the same because she also did not prove that she filed her late request within the seven-day "reasonable time" period allowed. Claimant did not file her late request for hearing until May 4, 2019. For that late request to have been filed within a "reasonable time," the circumstances that had prevented claimant from filing a timely request for hearing would have had to end no more than seven days prior to May 4, 2019, which would be April 27, 2019. Claimant's description of the circumstances that prevented a timely filing, and when they ended, suggested, however, that claimant became capable of requesting a hearing by mid-March 2019 at the earliest, and April 14<sup>th</sup> (when she resumed claiming benefits) at the latest. She did not file her late request for hearing until much more than seven days after either of those dates.

Claimant did not show good cause for the late filing, and did not show that she filed her late request for hearing within a reasonable time. Her late request for hearing must therefore be dismissed.

**DECISION:** Order No. 19-UI-132847 is affirmed.

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

**DATE of Service: August 9, 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.

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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 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**

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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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