

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0802**

*Affirmed*  
*Late Request for Hearing Dismissed*

**PROCEDURAL HISTORY:** On October 3, 2018, claimant filed an initial claim for benefits. On October 4, 2018, the Employment Department (the Department) served notice of the claim filed by claimant to the employer. On October 15, 2018, the employer filed a timely response to the notice of claim filed. On October 16, 2018, the Department served notice of potential charges to the employer's account for unemployment insurance benefits payable to claimant.

On October 30, 2018, the Department served, by mail, notice of an administrative decision concluding the employer discharged claimant, but not for misconduct connected to work (decision # 72252). On November 14, 2018, the employer requested relief of charges to its account for the benefits payable to claimant. On November 19, 2018, decision # 72252 became final without the employer having filed a request for hearing on that decision. On January 15, 2019, Department served, by mail, notice of an administrative decision denying the employer's request for relief of charges. On January 31, 2019, the employer filed a timely request for hearing on that decision. On May 15 and 17, 2019, ALJ Meerdink conducted a hearing on that decision.

On May 17, 2019, the employer filed a late request for hearing decision # 72252. On June 6, 2019, ALJ Kangas issued Order No. 19-UI-131194, dismissing the employer's late request for hearing on that decision, subject to the employer's right to renew the request by responding to an appellant questionnaire by June 20, 2019. The employer filed a timely response to the appellant questionnaire. On June 26, 2019, the Office of Administrative Hearings (OAH) cancelled Order No. 19-UI-131194, and on July 11, 2019 served notice of a hearing scheduled for July 24, 2019 on whether the employer's request for hearing on decision # 72252 should be allowed and, if so, the merits of that decision. On July 24, 2019, ALJ S. Lee conducted a hearing on whether the employer's request for hearing should be allowed, and on August 1, 2019 issued Order No. 19-UI-134401, re-dismissing the request. On August 21, 2019, the employer filed an application for review of Order No. 19-UI-134401 with the Employment Appeals Board (EAB).

EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of the Department's January 15, 2019 notice of the

administrative decision denying the employer's request for relief of charges and the employer's January 31, 2019 request for hearing on that decision, which have been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 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 exhibit(s) will remain in the record.

**FINDINGS OF FACT:** (1) The employer failed to file a timely request for hearing on decision # 72252 because it did not receive the October 30, 2018 notice of the decision, and did not become aware of the decision until after the November 19, 2018 filing deadline.

(2) The January 15, 2019 notice of the administrative decision denying the employer's request for relief of charges to its account for benefits payable to claimant stated, "We are unable to relieve your account because an Administrative Decision was issued on October 30, 2018 which found that this individual was discharged but not for misconduct in connection with work." EAB Exhibit 1. The employer received the January 15<sup>th</sup> notice on or before January 26, 2019, and first became aware of decision # 72252 at that time. *See* EAB Exhibit 1.

(3) The employer's January 31, 2019 request for hearing included a copy of the decision denying the employer's request for relief of charges, and stated:

RE: Roger D Staich  
1680153-3

To Whom it may concern:

We would like to officially appeal this decision. Ten Bridges Asset Management, LLC was never allowed to submit any evidence regarding this matter. We were told to call the case worker twice for this purpose. We never received a call back from the case worker.

Please let us know how reverse the relief decision and what our next move is.

EAB Exhibit 1.

(4) At the May 15 and 17, 2019 hearing on the decision denying the employer's request for relief of charges, the employer learned that the hearing was on that decision only, and not decision # 72252. The employer filed a request for hearing on decision # 72252 on May 17, 2019, almost four months after the employer first became aware of the decision on or before January 26, 2019.

**CONCLUSIONS AND REASONS:** The employer's request for hearing on decision # 72252 is dismissed.

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.*

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.

In the present case, the employer failed to file a timely request for hearing on decision # 72252 due to factors beyond its reasonable control—the employer did not receive the October 30, 2018 notice of the decision, and did not become aware of the decision until after the November 19, 2018 filing deadline. The employer therefore had good cause for failing to file a timely request for hearing. The remaining issue is whether the employer filed the late request for hearing within a reasonable time.

On or before January 26, 2019, the employer received the January 15, 2019 notice of the decision denying the employer's request for relief of charges. The notice stated that the employer's request was denied because an administrative decision was issued on October 30, 2018 that found that claimant was discharged but not for misconduct. The employer therefore became aware of decision # 72252 no later than January 26<sup>th</sup>, and the factors that prevented the employer from filing a timely request for hearing on that decision ceased to exist at that time.

The employer's January 31, 2019 request for hearing on decision denying the employer's request for relief of charges was filed within seven days after the employer first became aware of decision # 72252. However, the request for hearing included only a copy of the decision denying the employer's request for relief of charges, stated that the employer wanted to appeal "this decision," and asked for information on how to "reverse the relief decision." It did not request a hearing on decision # 72252, and although it expressed a present intent to appeal the decision denying the employer's request for relief of charges, it could not reasonably be determined from the request that the employer also intended to appeal decision # 72252. The employer's January 31<sup>st</sup> request for hearing on the decision denying the employer's request for relief of charges therefore did not constitute a valid request for hearing on decision # 72252.

The employer therefore did not file a request for hearing on decision # 72252 until May 17, 2019, almost four months after the factors that prevented a timely filing ceased to exist, and not within a reasonable time. The employer's late request for hearing on decision # 72252 therefore is dismissed.

**DECISION:** Order No. 19-UI-134401 is affirmed.

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

**DATE of Service:** September 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**

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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