

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0857**

*Application for Review Dismissed*

**FINDINGS OF FACT AND PROCEDURAL HISTORY:** On July 3, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 73312). On July 23, 2019, decision # 73312 became final without claimant having filed a timely request for hearing. On July 26, 2019, claimant filed a late request for hearing. On July 30, 2019, ALJ Kangas issued Order No. 19-UI-134223, dismissing claimant's late request for hearing subject to claimant's right to review the request by responding to an appellant questionnaire by August 13, 2019. On August 6, 2019, claimant responded to the appellant questionnaire. ALJ Kangas reviewed claimant's response, and on August 7, 2019, issued Order No. 19-UI-134636, dismissing claimant's late request for hearing. On August 27, 2019, Order No. 19-UI-134636 became final without claimant having filed a timely application for with the Employment Appeals Board (EAB). On September 9, 2019, claimant filed a late application for review with EAB.

EAB considered claimant's written argument when reaching this decision despite its failure to comply with procedural rules governing submission of written argument.

**FINDINGS OF FACT:** (1) On August 6, 2019, claimant faxed a response to the appellant questionnaire to OAH. Two hours later, claimant called OAH and spoke with an employee to confirm receipt of the document. The employee with whom claimant spoke suggested claimant call back each week for an update on whether anything had been scheduled in her case.

(2) OAH received claimant's August 6<sup>th</sup> faxed response to the appellant questionnaire. An ALJ reviewed the response, and on August 7<sup>th</sup>, issued a new decision re-dismissing claimant's late request for hearing for failure to show good cause. Page 3 of the decision stated, "You may appeal this decision by filing the attached form Application for Review with the Employment Appeals Board within 20 days of the date that this decision is mailed. \* \* \* If you have questions, please refer to the enclosed publication 'Rights of Review of a Hearing Decision' (UI Pub 15). If you did not receive a copy \* \* \* call the Office of Administrative Hearings \* \* \*."

(3) Claimant did not complete or file an application for review. Between August 6 and early September, claimant continued to call OAH each week to ask if something had been scheduled. She was told, “Call back in another week to see if anything has been scheduled.” On September 9, 2019, claimant called OAH again to ask about her case, and was told to call EAB. Shortly after calling EAB, claimant filed a late application for review.

**CONCLUSIONS AND REASONS:** The application for review should be dismissed.

On September 9, 2019, the appellant filed an application for review of Order No. 19-UI-134636 with the EAB. ORS 657.270(6) and ORS 657.270(7)(b) required the application for review to be filed no later than August 27, 2019. The 20 day filing period may be extended a “reasonable time” upon a showing of “good cause.” ORS 657.875; OAR 471-041-0070(2) (May 13, 2019). “Good cause” means that factors or circumstances beyond the applicant’s reasonable control prevented timely filing. OAR 471-041-0070(2)(a).

Claimant did not establish good cause for the late filing in this case. Although her statement suggests that she received what appears to be misleading or inaccurate information from an OAH employee about the status of her case, the undisputed evidence in this record also suggests that OAH mailed a decision to her – after her August 6<sup>th</sup> submission – that both acknowledged receipt of claimant’s appellant questionnaire response and concluded that based upon her response she did not have good cause for the late request for hearing in this case. That same decision also advised claimant of her right to request review of the dismissal, and included instructions for doing so. Given that claimant was provided with that information, it is more likely than not that filing a timely application for review pursuant to the information she was provided was within claimant’s reasonable control. Claimant’s late application for review must therefore be dismissed.

Even if we had concluded otherwise and allowed claimant’s late application for review in this case, the substantive outcome of the case would remain the same. Claimant filed a late request for hearing in this matter because she was waiting to obtain proof about her case. Although claimant might not have had any control over when she would receive that proof, Order No. 19-UI-134636 correctly concluded that it was within her reasonable control to have filed a timely request for hearing in accordance with the instructions she received when the Department mailed decision # 73312 to her. For that reason, had EAB had jurisdiction to review the hearing record in this matter and issue a decision on the merits of claimant’s late request for hearing, on *de novo* review and pursuant to ORS 657.275(2), the order under review would have been adopted, claimant’s late request for hearing would still have remained dismissed, and decision # 73312 would still have remained undisturbed.

**DECISION:** The application for review filed September 9, 2019 is dismissed. Order No. 19-UI-134636 remains undisturbed.

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

**DATE of Service: September 11, 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 desisyong.

## 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 Tý 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.

**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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