

**EMPLOYMENT APPEALS BOARD DECISION**  
**2020-EAB-0287**

*Reversed & Remanded*

**PROCEDURAL HISTORY AND FINDINGS OF FACT:** On January 31, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct, and claimant was disqualified from receiving benefits effective October 6, 2019 (decision # 111623). Claimant filed a request for hearing. On March 18, 2020, ALJ Kangas issued Order No. 20-UI-146445 dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by April 1, 2020. On April 6, 2020, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 20-UI-146445 with the Employment Appeals Board (EAB). On April 8, 2020, ALJ Kangas mailed a letter stating that the Office of Administrative Hearings (OAH) would not consider claimant's questionnaire response because it was late. This matter therefore comes before EAB based upon claimant's April 6, 2020 application for review of Order No. 20-UI-146445.

**EVIDENTIARY RULING:** EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is claimant's response to the appellant questionnaire, a 29-page submission including a fax transmission log, fax coversheet and statement concerning claimant's work separation from the employer, and has 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 into the record 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 will remain in the record.

**CONCLUSIONS AND REASONS:** Order No. 20-UI-146445 is set aside and this matter remanded for further development of the record.

ORS 657.269 provides parties 20 days from the date an administrative decision was mailed to file a timely request for hearing. 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. OAR 471-040-0005(1) (July 15, 2018) provides, "A Request for hearing may be filed on forms provided by the Employment

Department or similar offices in other states. 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.”

DR Exhibit 2 appears to show that claimant filed his request for hearing on decision #111623 on March 16, 2020, over three weeks after the February 20, 2020 deadline for a timely request for hearing on that decision. However, DR Exhibit 2 also shows that claimant spoke to a Department representative on March 16, 2020 about a “Hearing Request Follow Up,” and told that representative that he “sent over multiple fax request for a hearing on 02/04/2020.” In EAB Exhibit 1, claimant states that he filed his request for hearing by fax on February 4, 2020, and referenced a “Fax Cover Sheet” from a WorkSource office in Lane County, dated “2-4-20.” EAB Exhibit 1 includes the Fax Cover Sheet, on which it states, “Request for Hearing,” as well as what appears to be a confirmation that a 19-page document was successfully faxed to the Department. EAB Exhibit 1 also includes a “Separation Statement” in which claimant states that “he was given no reason” when he was discharged by the employer. EAB Exhibit 1.

Together, DR Exhibit 2 and EAB Exhibit 1 indicate that claimant may have filed a timely request for hearing on decision #111623 on February 4, 2020. The fax cover sheet states, “Request for Hearing,” and there appears to be enough information in the remaining pages of EAB Exhibit 1 to determine “what issues or decision is being appealed,” which was whether claimant’s work separation was a disqualifying work separation. *See* OAR 471-040-0005. To determine whether claimant’s request was sufficient to meet that requirement, however, this matter must be remanded for a hearing in which the record is developed to confirm whether claimant faxed the relevant documents included in EAB Exhibit 1 to the Department on February 4, 2020. If not, further inquiry is necessary to determine what documents were apparently faxed that day, and whether they constituted a request for hearing on decision # 111623 under OAR 471-040-0005(1). If not, the record also needs to be developed regarding whether factors beyond claimant’s reasonable control or an excusable mistake prevented him from filing a timely request for hearing, and whether claimant’s March 16, 2020 hearing request was made within seven days after those factors ceased to exist. Finally, if claimant’s request for hearing is allowed, an inquiry into the merits of decision # 111623 should be conducted.

Because further development of the record is necessary for a determination of when claimant filed his request for hearing on decision # 111623, whether claimant’s request for hearing should be allowed, and, if so, the merits of decision # 111623, Order No. 20-UI-146445 is reversed, and this matter is remanded.

**DECISION:** Order No. 20-UI-146445 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service:** April 16, 2020

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 20-UI-146445 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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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.

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