

**EMPLOYMENT APPEALS BOARD DECISION**  
**2020-EAB-0413**

*Order No. 20-UI-149420 – Reversed – Late Request for Hearing Allowed – Merits Hearing Required*  
*Order No. 20-UI-149416 – Reversed – Late Request for Hearing Allowed – Merits Hearing Required*

**PROCEDURAL HISTORY:** On March 16, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant left work without good cause and was disqualified from receiving benefits effective December 8, 2019 (decision # 101239). On March 17, 2020, the Department served notice of an administrative decision assessing a \$2,498 overpayment, a \$374.70 monetary penalty, and 16 penalty weeks (decision # 202861). On April 6, 2020, both decision # 101239 and decision # 202861 became final without claimant having filed a timely request for hearing. On April 7, 2020, claimant filed late requests for hearing with respect to both decisions.

On May 6, 2020, ALJ Frank conducted a consolidated hearing on decisions # 101239 and # 202861. On May 7, 2020, ALJ Frank issued Order No. 20-UI-149420, denying claimant's late request for hearing of decision # 101239 as untimely without good cause. On May 7, 2020, ALJ Frank also issued Order No. 20-UI-149416, denying claimant's late request for hearing of decision # 202861 as untimely without good cause. On May 22, 2020, claimant filed timely applications for review of Orders No. 20-UI-149420 and 20-UI-149416 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Order Nos. 20-UI-149420 and 20-UI-149416. For case tracking purposes, this decision is being issued in duplicate (EAB Decisions 2020-EAB-0413 and 2020-EAB-0414, respectively).

EAB considered both claimant's written argument and the employer's written argument when reaching this decision.

**FINDINGS OF FACT:** (1) "A few days before" April 6, 2020, claimant received a copy of decision # 101239 and decision # 202861. Audio Record at 19:05. Claimant disagreed with both decisions and intended to request hearings with respect to both.

(2) On April 6, 2020, at approximately 1:00 p.m., claimant attempted to send an email to the Department requesting a hearing. At that time, claimant did not receive any indication from his email provider that

he had been unsuccessful in transmitting his email request to the Department. Although claimant expected to receive a reply email from the Department, claimant did not receive one.

(3) In the early morning hours of April 7, 2020, claimant decided to check his email expecting that he might have received a reply from the Department to his earlier hearing request email. Claimant discovered a “fail to send” email in his inbox indicating that his earlier hearing request email and not been successfully sent. Audio Record at 21:52. When claimant reviewed the “fail to send” email he discovered that he had mistyped one of the letters and/or punctuation in the Department’s email address. At 3:02 a.m., claimant re-sent his email requesting a hearing.

**CONCLUSIONS AND REASONS:** Claimant’s respective late requests for hearing are allowed. Claimant is entitled to a hearing on the merits of decisions # 101239 and # 202861.

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.

Order No. 20-UI-149416 concluded that claimant had failed to demonstrate good cause “due to [claimant’s] inconsistency on almost every point of inquiry [related to the late request for hearing/good cause issue].” Order No. 20-UI-149416 at 3. The Order reasoned, in pertinent part:

[Claimant] variously suggested at hearing that he may have received the decision, did receive it after his mail was withheld and then picked up, and that his wife delivered it to him in his sleep. He has offered more than one date and time of day for the transmission of an appeal attempt allegedly preceding April 7, 2020. Finally, claimant has offered exclusive accounts of this earlier, purported failed attempt: he variously testified that his outgoing mail was not being sent for unknown reasons, only realizing this fact upon not receiving an automated reply, and that he had sent the appeal to an incorrect address and *had* received a message alerting him of this fact. Claimant has furnished no documentary evidence that would serve to prove, disprove or clarify the aforementioned.

Absent consistent, reliable and persuasive evidence, claimant cannot meet his burden and demonstrate that an excusable mistake or factors beyond his reasonable control resulted in the late appeal.

Order No. 20-UI-149416 at 3 (emphasis in original). While the Order’s conclusion that claimant’s failure to file a timely request for hearing was not the result of factors beyond claimant’s reasonable control is correct, the Order’s conclusion that his failure to file a timely request for hearing was not the result of excusable mistake was not supported by the record.

Here, the record reflects that claimant made substantial efforts to timely request a hearing, including sending an email request to the Department before the 20-day deadline had expired, and then checking and re-checking for a reply from the Department. When claimant later discovered that his attempts to

email a timely request for hearing were derailed by his inadvertent mistyping of the correct email address, he immediately re-sent his email to the Department; however, his re-sent email was untimely by three hours and two minutes. Given claimant's substantial efforts in attempting to comply with 20-day filing deadline, and the lack of any immediate indication that he had mistyped the correct email address, claimant's mistake in failing to timely file his request for hearing was excusable. In light of these circumstances, as well as the fact that claimant immediately attempted to rectify his excusable mistake by re-submitting his email requests for hearing, claimant's late request for hearing is allowed. Claimant is entitled to a hearing on the merits of decisions # 101239 and # 202861.

**DECISION:** Orders No. 20-UI-149420 and 20-UI-149416 are set aside, as outlined above.

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

**DATE of Service: June 9, 2020**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 20-UI-149420 or Order No. 20-UI-149416 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 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.

**Employment Appeals Board - 875 Union Street NE | Salem, OR 97311**  
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