

**EMPLOYMENT APPEALS BOARD DECISION**  
**2020-EAB-0484**

*Reversed*  
*Late Request for Hearing Allowed*  
*Merits Hearing Required*

**PROCEDURAL HISTORY:** On April 15, 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 unemployment insurance benefits effective March 8, 2020 (decision # 60919). On May 5, 2020, decision # 60919 became final without claimant having filed a request for hearing. On May 19, 2020, claimant filed a late request for hearing. On June 5, 2020, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for June 15, 2020 to consider claimant's late request for hearing and, if granted, the merits of decision # 60919. On June 15, 2020, ALJ Snyder conducted a hearing at which the employer failed to appear, and on June 18, 2020 issued Order No. 20-UI-151246, dismissing claimant's late request for hearing as without good cause, leaving decision # 60919 undisturbed. On June 24, 2020, claimant filed an application for review of Order No. 20-UI-151246 with the Employment Appeals Board (EAB).

Claimant submitted written argument with their application for review and again on July 1, 2020. Claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented them from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision, and claimant's written argument only to the extent it was based thereon.

**FINDINGS OF FACT:** (1) Beginning in late 2019, claimant became a victim of recurring domestic violence by an abusive partner. In late March 2020, while claimant was filing claims for unemployment insurance benefits, she gave the Department the Portland address of her abuser as her address of record because that was where she had intended to stay. However, after only a short time at that address, she was struck repeatedly by her abuser and began living in her car to escape the violence. Claimant became homeless and did not have a physical address where she could stay.

(2) On April 15, 2020, the Department mailed decision # 60919 to claimant's address of record on file with the Department. However, on that date and until approximately May 18, 2020, claimant continued

to live in her car and did not receive her mail, including decision # 60919. Decision # 60919 stated that for an appeal of the decision to be timely, claimant must file the appeal by May 5, 2020. While claimant lived in her car, she repeatedly attempted to contact the Department by telephone to determine the status of her claim, but was not successful.

(3) On approximately May 18, 2019, the mother of a friend of claimant allowed claimant to stay with them and use her address for claimant's unemployment claim.

(4) On May 19, 2020, claimant reached the Department by telephone. The representative she spoke with told her about the April 15, 2020 administrative decision and gave her the information necessary to contact OAH and request a hearing. Later that day, claimant contacted OAH and requested a hearing regarding decision # 60919. Exhibit 1 (May 19, 2020 Hearing Request).

**CONCLUSIONS AND REASONS:** Claimant's late request for hearing on decision # 60919 is allowed. Claimant is entitled to a hearing on the merits of that decision.

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-151246 concluded that claimant failed to show good cause for her late request for hearing, which therefore was subject to dismissal, reasoning as follows:

At hearing, claimant testified that she did not receive the administrative decision issued April 15, 2020 because she did not live at the address she had provided to the Employment Department . . . in March 2020. In Claimant's request for hearing, she stated that she was without an address for a few weeks, but had established [a new] address . . . [C]laimant was unable to specify which days she was without an address, or why she did not notify the Employment Department while claiming benefits that the address she had provided was not correct. Under OAR 471-040-0010(1)(b) good cause does not include failing to receive a document due to not notifying the Department of an updated address while claiming benefits. Because claimant's failure to request a hearing by the May 5, 2020 deadline was due to not providing the Employment Department of an updated address when she learned in March 2020 that she would not be residing at the address she provided to the Department, good cause to extend the filing deadline has not been established and a hearing on the merits of [decision # 60919] was not held.

Order No. 20-UI-151246 at 3. However, the order's conclusion is not supported by the record.

The record shows that claimant was struck repeatedly by her abuser, became homeless, and began living in her car to escape the violence after only a short time at her address of record on file with the Department in March 2020. The preponderance of the evidence also shows that her homelessness continued until approximately May 18, 2020, when a friend's mother invited her to stay with them, at

least temporarily. Consequently, contrary to Order No. 20-UI-151246, claimant had no “updated address” to provide to the Department until after May 18, 2020, thirteen days after the deadline for a timely request for hearing. Claimant testified that after she became homeless, she repeatedly and unsuccessfully attempted to contact the Department by phone to determine the status of her claim. That testimony was plausible because it was common knowledge that at that time, due to the COVID-19 epidemic, the Department was overwhelmed with the volume of new claims and calls. Consequently, contrary to Order No. 20-UI-151246, the record shows claimant did explain why she was unable to notify the Department while claiming benefits that the address she had provided earlier was no longer a valid address for claimant. The record as a whole shows that the exigent circumstances described by claimant, more likely than not, were beyond her reasonable control and resulted in her inability to both receive her mail, learn of, and meet the deadline for filing a timely request for hearing regarding decision # 60919.

The remaining issue is whether claimant filed her request for hearing within a reasonable time after the circumstances in question ceased to exist. The circumstances that prevented a timely filing ceased to exist on May 19, 2020, when claimant learned of the decision disqualifying her from benefits after speaking to OAH. Claimant filed her request for hearing the same day, which is less than seven days after the circumstances that prevented a timely filing ceased to exist. Claimant therefore filed her request for hearing within a reasonable time.

Claimant’s late request for hearing on decision # 60919 therefore is allowed. Claimant is entitled to a hearing on the merits of that decision.

**DECISION:** Order No. 20-UI-151246 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: July 2, 2020**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 20-UI-151246 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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