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State of Oregon  
**Employment Appeals Board**  
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Salem, OR 97311

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**EMPLOYMENT APPEALS BOARD DECISION**  
**2020-EAB-0514**

*Late Application for Review Allowed*  
*Order No. 20-UI-147097 – Reversed & Remanded*

**PROCEDURAL HISTORY:** On February 19, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause, and was disqualified from benefits effective January 26, 2020 (decision # 123231). On March 10, 2020, decision # 123231 became final without claimant having filed a timely request for hearing. On approximately March 23, 2020, claimant filed a late request for hearing on decision # 123231. On March 30, 2020, ALJ Kangas issued Order No. 20-UI-147097, dismissing claimant's late request for hearing subject to claimant's right to renew the request by responding to an appellant questionnaire by April 13, 2020. Claimant did not file a timely response to the appellant questionnaire. On April 20, 2020, Order No. 20-UI-147097 became final without claimant having filed a timely application for review with the Employment Appeals Board (EAB). Sometime in May 2020, claimant filed a late response to the appellant questionnaire and a late application for review with EAB. On May 29, 2020, ALJ Kangas sent a letter stating that claimant's questionnaire response was late and would not be considered. This matter is before EAB on claimant's May 2020 late application for review of Order No. 20-UI-147097, which was received by EAB on July 7, 2020.

**FINDINGS OF FACT:** (1) Claimant received decision # 123231 on March 13, 2020. Claimant's handwritten request for hearing was dated "03/21" and "3/11/20," and mailed in an envelope that was not postmarked by the U.S. Postal Service. The request for hearing was received by the Department on March 23, 2020.

(2) At all relevant times, claimant did not have reliable access to an email account or a functioning phone. Claimant also had housemates that sometimes intercept the mail she intends to send. On one occasion, one of her housemates returned a letter claimant had written under the mistaken belief that the mail was intended for claimant rather than something she had intended to send. Claimant has had to hand mail directly to her mail carrier to avoid it being intercepted by her housemates. Claimant's housemates also intercept delivered mail intended for claimant, search it, and misplace it. Claimant repeatedly asked them to leave her mail and other belongings alone but they continued to take and

misplace her mail and other belongings. Claimant did not have a safe place to receive mail, but could not change her situation because she needed to shelter in place due to COVID-19.

(3) Claimant received notice of Order No. 20-UI-147097 on approximately April 8, 2020. *See* claimant's appellant questionnaire response. Sometime after April 8, 2020, claimant submitted her response. The response was not attached to an email, did not include an envelope or postmark, and did not include an encoded transmittal consistent with documents sent via fax.

(4) On May 3, 2020, claimant sent an email to the Department asking about her request for hearing, and stating, "I am not sure if it was received or not." *See* claimant's May 3, 2020 email. The Office of Administrative Hearings received claimant's email on May 20, 2020.

(5) ALJ Kangas's May 29, 2020 letter to claimant stated that claimant had submitted her late response to the appellant questionnaire by email on May 20, 2020. The record contains no evidence of an email sent by claimant on that date.

**CONCLUSIONS AND REASONS:** Claimant's late application for review is allowed. This matter is remanded to OAH for a hearing on whether claimant had good cause for the late request for hearing.

**Late application for review.** An application for review is timely if it is filed within 20 days of the date that OAH mailed the decision for which review is sought. ORS 657.270(6); OAR 471-041-0070(1) (May 13, 2019). Application for review filing dates are established as follows: if delivered, the date of receipt; if mailed through the U.S. Postal Service, the postmark date; if mailed by another carrier, the date of deposit with that carrier; and if faxed, emailed, or electronically filed, the encoded date. OAR 471-041-0065(1) (May 13, 2019). If those dates are missing, unclear, or improbable, the filing date is the date EAB determines to be the most probable date of filing. OAR 471-041-0065(2).

The method by which claimant filed her application for review of this case is unclear. Her written submission is so dark that portions are not legible, but the pages claimant submitted did not display an encoded date, and the materials transmitted to EAB as the designated hearing record did not include an envelope or indication how the materials were filed. Although the May 29<sup>th</sup> letter ALJ Kangas sent to claimant referenced a May 20<sup>th</sup> email, the designated hearing record did not include any email sent by claimant on May 20<sup>th</sup>.

The record clearly establishes that the deadline for claimant to file an application for review in this case was April 20<sup>th</sup>. Because claimant's May 3, 2020 email states that she had, prior to that date, "put in her written request for a hearing" and was "not sure if it was received or not," but did not reference having sent the questionnaire response or request for further process, it is unlikely that claimant submitted the questionnaire response or application for review prior to that date. The actual date upon which claimant filed those materials cannot be determined, but it is apparent that she filed them sometime between May 3, 2020 and May 20, 2020. Because claimant apparently filed her application for review after that date, in May 2020, claimant's application for review was late.

The 20 day filing period for filing an application for review may be extended a "reasonable time" upon a showing of "good cause." ORS 657.875; OAR 471-041-0070(2). "Good cause" means that factors or circumstances beyond the applicant's reasonable control prevented timely filing. OAR 471-041-

0070(2)(a). A “reasonable time” is seven days after the circumstances that prevented the timely filing ceased to exist. OAR 471-041-0070(2)(b). A late application for review will be dismissed unless it includes a written statement describing the circumstances that prevented a timely filing. OAR 471-041-0070(3).

Claimant’s detailed description of her difficulties both sending and receiving mail, despite her efforts to ensure that she had control over her mail and received mail sent to her, suggest that it is more likely than not that filing a timely application for review in this case was beyond her reasonable control. Claimant’s description of taking prompt action once she became aware she had not timely received mail suggest it is more likely than not that claimant filed her late application for review in this case within seven days of when the circumstances that had prevented a timely filing ceased to exist. Because claimant showed good cause and filed within a reasonable time, her late application for review is allowed.

**Late request for hearing.** 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. An “excusable mistake” is usually defined to include things like due process issues, inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply.

Claimant’s late request for hearing, handwritten letters, and questionnaire response all suggest that claimant might have had good cause to file a late request for hearing. However additional evidence is needed to determine whether or not she had good cause. Additional evidence is also required before a determination can be made about whether or not claimant filed the late request for hearing within a reasonable time.

ORS 657.270 requires that all parties be given a reasonable opportunity for a fair hearing. That obligation necessarily requires an ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary for a determination of whether or not claimant’s late request for hearing should be allowed, Order No. Order No. 20-UI-147097 is reversed, and this matter is remanded.

The primary issue on remand is whether or not claimant had good cause for her late request for hearing. Only if claimant’s late request for hearing is allowed would the ALJ have jurisdiction to decide whether or not claimant’s work separation from the employer was disqualifying for purposes of unemployment insurance benefits.

**DECISION:** Claimant’s late application for review of Order No. 20-UI-147097 is allowed. Order No. 20-UI-147097 is set aside, and this matter remanded for further proceedings consistent with this order.

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

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

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. Order No. 20-UI-147097 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.

