

**EMPLOYMENT APPEALS BOARD DECISION**  
**2020-EAB-0623**

*Affirmed*  
*Late Request for Hearing Dismissed*

**PROCEDURAL HISTORY:** On August 30, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from August 11, 2019 through August 17, 2019, and was ineligible for benefits for that week and until the reason for the denial ended (decision # 80419). On September 19, 2019, decision # 80419 became final without claimant having filed a timely request for hearing. On August 31, 2020, claimant filed a late request for hearing. On September 3, 2020, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for September 16, 2020 to consider claimant's late request for hearing and, if granted, the merits of decision # 80419. On September 16, 2020, ALJ Murdock conducted a hearing, and on September 17, 2020 issued Order No. 20-UI-154087, dismissing claimant's late request for hearing as without good cause, leaving decision # 80419 undisturbed.<sup>1</sup> On September 21, 2020, claimant filed a timely application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument in support of claimant's application for review. 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.

**FINDINGS OF FACT:** (1) On August 30, 2019, the Department mailed decision # 80419 to claimant's address of record on file with the Department. Decision # 80419 stated, in relevant part, "You have the right to appeal this decision if you do not believe it is correct. Your request for appeal must be received no later than September 19, 2019." Exhibit 1. The decision also stated, in relevant part, "If you do not understand this decision, contact the Unemployment Insurance Center above immediately." Exhibit 1.

<sup>1</sup> Although the order under review stated, "Exhibits 1 and 3 were admitted into the record," this reference appears to have been a typographical error as the record contains two exhibits, marked as "Exhibit 1" and "Exhibit 2." Order No. 20-UI-154087 at 1.

(2) Claimant received decision # 80419 shortly after it was mailed to her at her address of record, read the decision and understood that she could appeal, but “set it aside.” Audio Record at 14:35 to 15:05. Claimant “didn’t want to take the time it would take to mess with it because [she] thought it was too complicated . . . [and] . . . wanted to find work.” Audio Record at 17:15 to 17:35.

(3) On August 31, 2020, claimant filed a request for hearing on decision # 80419 after being “urged by a family member” because of her limited finances. Exhibit 2 at 2.

**CONCLUSIONS AND REASONS:** Claimant’s late request for hearing on decision # 80419 is dismissed.

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.

The Department mailed decision # 80419 to claimant at her address of record on August 30, 2019. Based on the date of mailing, the 20-day deadline for claimant to file a timely request for hearing was September 19, 2019. Claimant did not file her request for hearing until August 31, 2020. Accordingly, claimant’s hearing request was late.

Claimant failed to show that factors beyond her reasonable control prevented her from filing a timely hearing request. Claimant received and read decision # 80419 shortly after it was mailed, but “set it aside” because she “thought it was too complicated . . . [and] . . . wanted to find work.” However, decision # 80419 advised claimant of the deadline for filing an appeal and advised, “If you do not understand this decision, contact the Unemployment Insurance Center above immediately.” Claimant did not establish that it was beyond her reasonable control to carefully read the administrative decision and follow its instructions regarding filing a timely appeal or to contact the Unemployment Insurance Center for advice about filing an appeal if she did not understand the decision or how to file an appeal.

Claimant also failed to show that an excusable mistake prevented her from filing a timely hearing request. Although claimant’s failure to do so was likely the result of a mistake on claimant’s part, it was not an “excusable mistake” within the meaning of the administrative rules because it did not, for example, raise a due process issue, and was not the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply. Decision # 80419 adequately notified claimant of the deadline for filing a timely hearing request and claimant failed to show that her failure to do so was the result of her inability to file a timely hearing request after substantial efforts to comply.

Because claimant failed to show that factors beyond her reasonable control or an excusable mistake prevented her from filing a hearing request by the September 19, 2019 deadline, she failed to establish good cause to extend the filing deadline beyond that date. Accordingly, her late request for hearing is dismissed, leaving decision # 80419 undisturbed.

**DECISION:** Order No. 20-UI-154087 is affirmed.<sup>2</sup>

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

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

**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](https://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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<sup>2</sup> This dismissal is confined to claimant’s ineligibility for regular unemployment insurance benefits under decision # 80419. However, claimant might be eligible for benefits under one of the Department’s other unemployment insurance benefit programs, which are specifically intended as income replacement for individuals unemployed due to the COVID-19 pandemic. If the parties have questions about benefits or eligibility for alternative benefit programs, they may contact the Department; the Department’s “Contact Us” form is available at: <https://unemployment.oregon.gov/contact-us>.



# 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 ໄດ້ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

**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 الإستئناف 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.

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