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State of Oregon  
**Employment Appeals Board**  
875 Union St. N.E.  
Salem, OR 97311

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<p><b>EMPLOYMENT APPEALS BOARD DECISION</b> <b>2020-EAB-0624</b></p>
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*Reversed*  
*Request for Hearing Allowed*  
*Merits Hearing Required*

**PROCEDURAL HISTORY:** On January 3, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause, was disqualified from receiving benefits effective September 15, 2019, and was overpaid \$3,888.00 (decision # 102543). Claimant requested a hearing, which was construed as late. On April 20, 2020, ALJ Kangas issued Order No. 20-UI-148371, dismissing claimant's late request for hearing subject to his right to renew the request by responding to an appellant questionnaire by May 4, 2020. On May 4, 2020, claimant responded to the questionnaire.

On May 5, 2020, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 20-UI-148371 was canceled. On May 6, 2020, OAH mailed notice of a hearing scheduled for May 18, 2020. On May 18, 2020, ALJ Amesbury held a hearing, and on May 20, 2020 issued Order No. 20-UI-150035, re-dismissing claimant's late request for hearing. On June 8, 2020, claimant filed a timely application for review of Order No. 20-UI-150035 with the Employment Appeals Board (EAB). EAB received the application for review on September 22, 2020.

Claimant wrote on his application for review, "I do not feel the hearings judge was fair, or listened to my side of the testimony." Based on claimant's perception as to the ALJ's fairness it is recommended that a different administrative law judge be assigned to preside over the remand hearing.

**FINDINGS OF FACT:** (1) On January 6, 2020, claimant received notice of decision # 102543. He disagreed with the decision.

(2) On January 10, 2020, claimant mailed a short handwritten request for hearing to the Department's Union Street address by placing the request for hearing in the U.S. Mail at Salem, Oregon's Vista post office location along with some bills was paying.

(3) For unknown reasons, claimant's January 10<sup>th</sup> request for hearing was either not received by the Department, or was not timely or correctly processed. On April 7, 2020, claimant filed a second request for hearing on decision # 102543.

**CONCLUSIONS AND REASONS:** Claimant's request for hearing was timely, and therefore is allowed.

The first issue in this case is whether claimant filed a timely request for hearing or a late request for hearing; if claimant filed a timely request for hearing, we need not address whether claimant had good cause to file his second request late. 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. In this case, the Department issued decision # 102543 on January 3, 2020. To be timely, a request for hearing on decision # 102543 had to be filed on or before January 23, 2020.

The order under review concluded that although claimant claimed to have filed a request for hearing on January 10<sup>th</sup>, the record failed to show that he actually did, in part because current Department records do not include the January 10<sup>th</sup> letter, and in part because "claimant's testimony seemed to evolve during the hearing in an effort to make it more favorable," and therefore was not credible. Order No. 20-UI-150035 at 6. The record does not support those conclusions.

Claimant clearly, repeatedly, and concisely testified that he mailed a short, handwritten request for hearing on January 10<sup>th</sup>. His testimony about that event was credible not only because claimant provided consistent and emphatic testimony about having done so, but also because his description of that event involved a detailed account summarizing what he wrote in the letter, that he mailed the letter at the U.S. Postal Service's Vista location, and that he mailed the letter at the same time as he mailed other items.

The fact that claimant might have used hyperbole or responded facetiously to some of the ALJ's questions does not erode the strength and consistency of his testimony about the events of January 10<sup>th</sup>. That is particularly so where, as here, it appears on review of the record that the ALJ misconstrued a number of claimant's attempts to explain his actions on January 10<sup>th</sup>, and failed to note the distinction between claimant's testimony about his January 10<sup>th</sup> letter and the subsequent email he sent to the Department to re-request a hearing. The ALJ unduly focused on claimant's turns of phrase, for example, focusing a significant portion of the inquiry and the order under review on claimant's inability to recall how many sentences his short January 10<sup>th</sup> letter contained, and the importance of his speculation upon being asked for greater detail that it contained 30 sentences. The fact that claimant did not know how many sentences he wrote, or did not know how many of his handwritten sentences could ordinarily fit on a page, does not undermine claimant's specific and detailed testimony about what he included in the letter and when he sent it to the Department. Put another way, the ALJ's apparent inability to follow claimant's testimony does not suggest that claimant was not credible.

The fact that the Department either failed to receive claimant's January 10<sup>th</sup> letter, or received the letter but did not, or has not, processed it yet, also does not suggest that claimant did not send the letter. Circumstances in 2020 have significantly affected mail service and how the Department processes mail. In this case, for example, EAB received claimant's June 6<sup>th</sup> application for review on September 22, 2020, which is well over 100 days after he sent it. During the same week, EAB received three other applications for review between 42 and 112 days after they were mailed; since January 1, 2020, EAB

has often received applications for review between 44 and 88 days after they were mailed, either because of delays attributed to the U.S. Postal Service delivery interruptions or Departmental delays processing mail because of mail volume.<sup>1</sup>

For the foregoing reasons, it is more likely than not that claimant filed a timely request for hearing by handwriting a letter, addressing it to the Department's Union Street address, and depositing it in the U.S. mail on January 10<sup>th</sup>. Claimant is entitled to a hearing on the merits of decision # 102543.

**DECISION:** Order No. 20-UI-150035 is set aside. Claimant is entitled to a hearing on the merits of decision # 102543.

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

**DATE of Service: September 24, 2020**

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<sup>1</sup> EAB has taken notice of these facts, which are within EAB's specialized knowledge. OAR 471-041-0090(1) (May 13, 2019). Any party that objects to our taking notice of this information 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 noticed fact will remain in the record.



# 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**

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.

**Employment Appeals Board - 875 Union Street NE | Salem, OR 97311**  
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711  
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