

**EMPLOYMENT APPEALS BOARD DECISION**  
**2020-EAB-0709**

*Reversed & Remanded*  
*Revocada y Remitida Para Otra Audiencia*

**PROCEDURAL HISTORY:** On July 24, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause and was disqualified from receiving unemployment insurance benefits effective February 23, 2020 (decision # 120118). On August 13, 2020, decision # 120118 became final without claimant having filed a timely request for hearing. On September 27, 2020, claimant filed a late request for hearing. On October 6, 2020, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for October 19, 2020 to consider whether claimant's late request for hearing should be allowed and, if allowed, the merits of decision # 120118. On October 19, 2020, ALJ Williams conducted a hearing that was interpreted in Spanish at which the employer failed to appear, and on October 27, 2020 issued Order No. 20-UI-155769, dismissing claimant's late request for hearing. On November 9, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

**HISTORIA PROCESAL:** *El 24 de julio de 2020, el Departamento de Empleo de Oregón (el Departamento) envió notificación de una decisión administrativa concluyendo que la reclamante dejó el trabajo sin una buena causa (decisión # 120118). La decisión se convirtió en final el 13 de agosto de 2020 sin que la reclamante hubiera presentado una aplicación oportuna para una audiencia. El 27 de septiembre de 2020, la reclamante sometió una aplicación tardía para una audiencia. El 6 de octubre de 2020, la Oficina de Audiencias Administrativas (OAH) mandó por correo notificación de una audiencia prevista para el 19 de octubre de 2020 para considerar si la aplicación tardía para una audiencia de la reclamante debía ser permitida y, si se permitía, los méritos de la decisión # 120118. El 19 de octubre de 2020, el juez administrativo Williams llevó a cabo una audiencia que fue interpretada en español en el que el empleador no participó, y el 27 de octubre de 2020, emitió la Orden No. 20-UI-155769, rechazando la aplicación tardía de la reclamante para una audiencia. El 9 de noviembre de 2020, la reclamante presentó una aplicación de revisión de la orden judicial a La Junta de Apelaciones de Empleo (EAB).*

**FINDINGS OF FACT:** (1) Several weeks before August 1, 2020, claimant became concerned about her grandfather, who lived in Mexico, when he became ill with COVID-19.

(2) Sometime shortly after July 24, 2020, claimant received decision # 120118. Claimant read the decision but did not understand the decision “very well.” Transcript at 4. It stated that a request for hearing from that decision must be filed no later than August 13, 2020. Exhibit 1. At the time claimant received the decision, she was “very, very worried and upset” about her grandfather. Transcript at 6.

(3) On August 1, 2020, claimant’s grandfather died from COVID-19. Claimant was unable to travel to Mexico due to pandemic-related travel restrictions, and had to make many telephone calls related to her grandfather’s death. At that time, claimant had “so many things going on,” felt that “her brain wasn’t functioning perhaps as it should,” and felt depressed. Transcript at 5. Due to these factors, claimant did not inquire about how to respond to decision # 120118 at that time.

(4) Some time later, claimant made multiple attempts to call the Department by telephone and claimant waited “hours and hours and hours” for someone to answer her calls or explain what had occurred with her claim. Transcript at 10; Audio Record at 35:50 to 36:10. The Department transferred claimant to the number for a representative who had claimant’s file, but never answered claimant’s calls and never explained to claimant what occurred with claimant’s claim. Audio Record at 36:11 to 36:22. Because she did not receive answers from the Department, claimant looked for and read the “unemployment manual” to be able to understand what was occurring with her claim, and based on what she read, decided to respond to decision # 120118. Transcript at 5; Audio Record at 36:23 to 36:30.

(5) On September 27, 2020, claimant filed a late request for hearing.

**CONCLUSIONS AND REASONS:** Order No. 20-UI-155769 is reversed and remanded for further proceedings consistent with this decision. *La Orden No. 20-UI-155769 se pone a un lado, y esta materia se remite para otros procedimientos constantes con esta orden.*

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.

It is undisputed that claimant’s request for hearing was late because the deadline for filing a timely request for hearing was August 13, 2020, and claimant did not file her request until September 27, 2020. Order No. 20-UI-155769 found that claimant delayed filing a request for hearing on decision # 120118 until September 27, 2020 because she did not understand why her benefits were denied or how to appeal the decision, and because her grandfather died on August 1, 2020.<sup>1</sup> The order concluded that claimant did not establish good cause for her late hearing request because her desire to understand why the Department denied her benefits did not prevent claimant from requesting a hearing by August 13, 2020.<sup>2</sup> The order reasoned further that the death of claimant’s grandfather did not prevent claimant from

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<sup>1</sup> Order No. 20-UI-155769 at 2.

<sup>2</sup> Order No. 20-UI-155769 at 2.

requesting a hearing by August 13 because claimant did not travel to attend his services.<sup>3</sup> However, the record does not support the order's conclusion.

The record shows that claimant had "good cause" to extend the deadline for filing her request for hearing, but does not show if the deadline could be extended until September 27, 2020. The death of claimant's grandfather was a factor beyond claimant's reasonable control that resulted in claimant being overwhelmed and depressed such that she delayed inquiring about what she had to do if she disagreed with decision # 120118. The difficulty claimant had in contacting a resource at the Department to assist her with requesting a hearing was another factor beyond claimant's reasonable control that caused claimant to request a hearing late. However, although the record shows that claimant had "good cause" to extend the deadline to request a hearing, the record does not contain sufficient information to show when those factors ceased to exist so that it is possible to determine if the deadline may be extended to September 27, 2020. Only if the factors ceased to exist by no later than September 20, 2020, seven days before September 27, may claimant's late request for hearing be allowed.

On remand, the record must be developed to show how much time claimant was delayed in requesting a hearing by the impact of her grandfather's death, and by the difficulty claimant had in contacting someone at the Department regarding decision # 120118. The record does not show when claimant learned that she must request a hearing and/or how to request a hearing, and if claimant filed the request within seven days from that date. Claimant's request for hearing was submitted to the Department on September 27, 2020, but was dated August 27, 2020 by claimant. Exhibit 1. The record does not show why the letter, dated August 27, 2020, was not submitted until September 27, 2020. In her request for hearing, claimant states that she was using a representative to help her with the technical aspects of the appeal process, and that claimant thought her representative had already sent the request for hearing before September 27.<sup>4</sup> The record does not show how claimant's reliance on, or miscommunication with, a representative may have delayed her request for hearing, and when claimant knew that she still needed to file a request for hearing.

If, on remand, the record shows that filing her request for hearing on September 27, 2020 was within a reasonable time, the hearing on remand must also address the merits of decision # 120118.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the 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 September 27, 2020 is a

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<sup>3</sup> Order No. 20-UI-155769 at 2.

<sup>4</sup> In pertinent part, claimant's Request for Hearing states the following: "Unfortunately, this form was mailed late. This is due to the fact that I was having problems with the language and had been using a representative to help me with the technical aspects of the appeal process. I had the impression that my representative had already presented this information. Unfortunately, there was a communication problem and the information was not sent before." *"Desafortunadamente, este formulario se envi  tarde. Esto se debe al hecho de que estaba teniendo problemas con el idioma y he estado utilizando a un representante para que me ayude con los aspectos t cnicos del proceso de apelaci n. Ten a la impresi n de que mi representante ya hab a presentado esta informaci n. Desafortunadamente, hubo un problema de comunicaci n y la informaci n no se envi  antes."* Exhibit 1.

reasonable time to extend the filing deadline for claimant's request for hearing, Order No. 20-UI-155769 is reversed, and this matter is remanded.

**DECISION:** Order No. 20-UI-155769 is set aside, and this matter remanded for further proceedings consistent with this order. *La Orden de la Audiencia 20-UI-155769 se pone a un lado, y esta materia se remite para otros procedimientos constantes con esta orden.*

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

**DATE of Service: December 15, 2020**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 20-UI-155769 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

*NOTA: La falta de cualquier parte de presentarse a la audiencia sobre la remisión no reinstalará la Orden de la Audiencia 20-UI-155769, ni devolverá esta orden a la EAB. Solamente una aplicación oportuna para revisión de la orden subsiguiente de la nueva audiencia volverá este caso a la 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 ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄຳຕັດສິນນີ້.

**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**  
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