

**EMPLOYMENT APPEALS BOARD DECISION**  
**2020-EAB-0788**

*Affirmed ~ Confirmada*  
*Request to Reopen Denied~ La Aplicación Para Reabrir Es Negada*

**PROCEDURAL HISTORY:** On June 1, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work or eligible to receive unemployment insurance benefits from April 26, 2020 through May 9, 2020 (decision # 100237). On June 22, 2020, decision # 100237 became final without claimant having filed a timely request for hearing. On September 9, 2020, claimant filed a late request for hearing. On September 22, 2020, ALJ Kangas issued Order No. 20-UI-154218, dismissing claimant's late request for hearing subject to claimant's right to renew the request by responding to an appellant questionnaire by October 6, 2020. On September 30, 2020, claimant filed a timely response to the appellant questionnaire.

On October 7, 2020, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for October 21, 2020 to consider whether claimant's late request for hearing should be allowed and, if allowed, the merits of decision # 100237. On October 13, 2020, OAH mailed notice of a change in the notice of hearing, rescheduling the hearing to October 27, 2020 at 10:45 a.m. Claimant failed to appear at the hearing. On October 27, 2020, ALJ Janzen issued Order No. 20-UI-155771, re-dismissing claimant's late request for hearing on decision # 100237. On November 5, 2020, claimant filed a timely request to reopen the hearing. On November 17, 2020, OAH mailed notice of a hearing scheduled for December 1, 2020 to consider whether to reopen the October 27, 2020 hearing, and if allowed, if the late application for a hearing should be allowed and, if allowed, the merits of decision # 100237. On December 1, 2020, ALJ Janzen conducted a hearing, and on December 2, 2020, issued Order No. 20-UI-157078, denying claimant's request to reopen the October 27, 2020 hearing. On December 16, 2020, claimant filed a timely application for review of Order No. 20-UI-157078 with the Employment Appeals Board (EAB).

**HISTORIA PROCESAL:** *El 1 de junio de 2020, el Departamento de Empleo de Oregon (el Departamento) envió notificación de una decisión administrativa concluyendo que el reclamante no estaba disponible para trabajar o elegible para recibir beneficios de desempleo desde el 26 de abril de 2020 hasta el 9 de mayo de 2020 (decisión # 100237). La decisión se convirtió final el 22 de junio de 2020 sin que el reclamante hubiera presentado una aplicación oportuna para una audiencia. El 9 de septiembre de 2020, el reclamante sometió una aplicación tardía para una audiencia. El 22 de*

*septiembre de 2020, la jueza administrativa Kangas emitió la Orden No. 20-UI-154218, rechazando la aplicación tardía del reclamante sujeto al derecho del reclamante a renovar la aplicación respondiendo a un cuestionario apelante no más tarde que el 6 de octubre de 2020. El 30 de septiembre de 2020, el reclamante presentó una respuesta oportuna al cuestionario apelante.*

*El 7 de octubre de 2020, la Oficina de Audiencias Administrativas (OAH) mandó por correo notificación de una audiencia prevista para el 21 de octubre de 2020 para considerar si la aplicación tardía para una audiencia del reclamante debía ser permitida y, si se permitía, los méritos de la decisión # 100237. El 13 de octubre de 2020, OAH mandó por correo notificación de un cambio a la notificación de la audiencia, reprogramando la audiencia al 27 de octubre de 2020 a las 10:45 de la mañana. El reclamante no se presentó a la audiencia. El 27 de octubre de 2020, el juez administrativo Janzen emitió la Orden No. 20-UI-155771, rechazando otra vez la aplicación tardía del reclamante sobre decisión # 100237. El 5 de noviembre de 2020, el reclamante archivó una aplicación oportuna para reabrir la audiencia. El 17 de noviembre de 2020, OAH mandó por correo notificación de una audiencia prevista para el 1 de diciembre de 2020 para considerar si la aplicación para reabrir la audiencia debía ser permitida y, si se permitía, si la aplicación tardía para una audiencia del reclamante debía ser permitida, y si se permitía, los méritos de la decisión # 100237. El 1 de diciembre de 2020, ALJ Janzen llevó a cabo una audiencia, y el 2 de diciembre de 2020, emitió la Orden No 20-UI-157078, negando la aplicación del demandante para reabrir la audiencia del 27 de octubre de 2020. El 16 de diciembre de 2020, el reclamante presentó una aplicación oportuna de revisión de la Orden No. 20-UI-157078 a La Junta de Apelaciones de Empleo (EAB).*

**WRITTEN ARGUMENT:** EAB considered claimant's written argument in reaching this decision.

**ARGUMENTO POR ESCRITO:** EAB consideró el argumento por escrito del reclamante en llegar a esta decisión.

**FINDINGS OF FACT:** (1) On October 7, 2020, OAH mailed claimant at his address of record notice of a hearing scheduled for October 21, 2020. Claimant received the notice of hearing.

(2) On October 13, 2020, claimant contacted OAH by telephone and asked that it reschedule the hearing. OAH told claimant that his hearing was rescheduled to October 27, 2020 at 10:45 a.m. On October 13, 2020, OAH mailed notice of the change to the notice of hearing, stating that it was rescheduled to October 27, 2020 at 10:45 a.m. Claimant received the change to the notice of hearing before the October 27, 2020 hearing.

(3) Claimant usually programmed important appointments in his cell phone to remind him the day before the appointment. However, claimant forgot to program the new hearing date and time in his cell phone and on October 27, 2020, forgot about the hearing.

(4) On October 28, 2020, claimant realized that he had missed the October 27, 2020 hearing. On November 5, 2020, claimant filed a motion to reopen the October 27, 2020 hearing.

**CONCLUSIONS AND REASONS:** Claimant's request to reopen is denied. *La aplicación del reclamante para reabrir la audiencia es negada.*

ORS 657.270(5) provides that any party who failed to appear at a hearing may request to reopen the hearing, and the request will be allowed if it was filed within 20 days of the date the hearing decision was issued and shows good cause for failing to appear. “Good cause” exists when the requesting party’s failure to appear at the hearing arose from an excusable mistake or from factors beyond the party’s reasonable control. OAR 471-040-0040(2) (February 10, 2012).

Claimant explained that he failed to appear at the October 27, 2020 hearing due to “human error,” because he did not program the hearing appointment in his telephone and forgot about the hearing on October 27. Transcript at 5. However, claimant did not assert that he forgot to attend the hearing due to factors beyond his reasonable control. Nor does the record show that claimant took precautions to ensure that he would not forget the hearing, such as setting a reminder in his telephone, writing it on a calendar, or checking his “papers” on his desk to remind himself of the upcoming hearing date. Transcript at 6-7. Although claimant’s failure to appear at the hearing was a mistake, 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 apparently was not the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply. Claimant therefore failed to establish good cause for failing to appear at the hearing.

For these reasons, claimant’s request to reopen the October 27, 2020 hearing is denied.

**DECISION:** Order No. 20-UI-157078 is affirmed. *La Orden de la Audiencia 20-UI-157078 queda confirmada.*

S. Alba and D. P. Hettle.

**DATE of Service: January 15, 2021**

**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](http://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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*NOTA: Usted puede apelar esta decisión presentando una solicitud de revisión judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) dentro de los 30 días siguientes a la fecha de notificación indicada arriba. Vea ORS 657.282. Para obtener formularios e información, puede escribir a la Corte de Apelaciones de Oregon, Sección de Registros (Oregon Court of Appeals/Records Section), 1163 State Street, Salem, Oregon 97310 o visite el sitio web en [courts.oregon.gov](http://courts.oregon.gov). En este sitio web, hay información disponible en español.*

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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 ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

**Arabic**

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**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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