

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0041**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On October 16, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant not for misconduct and that claimant was not disqualified from receiving unemployment insurance benefits (decision # 133758). The employer filed a request for hearing. On December 16, 2020, ALJ Kangas issued Order No. 2020-UI-157751, dismissing the employer's request for hearing as late, subject to the employer's right to renew the request by responding to an appellant questionnaire by December 30, 2020.

On January 4, 2021, the employer filed a late response to the appellant questionnaire and a timely application for review of Order No. 2020-UI-157751 with the Employment Appeals Board (EAB). On January 19, 2021, ALJ Kangas mailed a letter stating that because the employer's response to the questionnaire was late, the Office of Administrative Hearings (OAH) would not consider it or issue another order, and that Order No. 20-UI-157751 remained in effect. This matter is before EAB based upon the employer's timely application for review of Order No. 20-UI-157751.

**EVIDENTIARY MATTER:** EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of the employer's response to the appellant questionnaire, and has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 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 exhibit(s) will remain in the record.

**FINDINGS OF FACT:** (1) On October 16, 2020, the Department mailed decision # 133758 to the employer's address on file with the Department. Decision # 133758 stated, "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 November 5, 2020." Exhibit 1.

(2) On November 9, 2020, the employer requested a hearing online regarding decision # 133758. Exhibit 2.

(3) The employer stated in its response to the appellant questionnaire that it received decision # 133758 on October 19, 2020 and filed a hearing request November 2, 2020 “via email.” EAB Exhibit 1.

**CONCLUSIONS AND REASONS:** Order No. 20-UI-157751 is set aside and this matter remanded for further development of the record.

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.

Order No. 20-UI-157751, the order under review, correctly concluded that the employer’s online request for hearing filed on November 9, 2020 was late.<sup>1</sup> However, the employer stated in its response to the appellant questionnaire that it filed a hearing request by email on November 2, 2020, which would have been a timely request for hearing. EAB Exhibit 1. The record does not contain sufficient information to determine if the employer actually did so. The record does not contain any details about the employer’s assertion that the employer sent a request for hearing by email on November 2, 2020. The record does not show why the employer submitted a request for hearing online on November 9, 2020 if the employer had already submitted a request for hearing on November 2, 2020. The record does not contain a copy of the employer’s November 2, 2020 request for hearing.

Alternately, the record does not contain sufficient information to determine if the employer filed the November 9, 2020 request late due to factors beyond the employer’s reasonable control or due to an excusable mistake, or whether the employer filed the late request for hearing within seven days after those factors ceased to exist. On remand, the record must be developed to show why, if the employer received decision # 133758 on October 19, 2020, the employer filed a request for hearing online on November 9, 2020.

Because further development of the record is necessary for a determination of whether the employer filed a timely request for hearing or the employer’s late request for hearing on decision # 133758 should be allowed, Order No. 20-UI-157751 is reversed, and this matter is remanded. If the ALJ determines that the employer filed a timely request for hearing, or alternately, allows the employer’s late request for hearing, a hearing on the merits of decision # 133758 should be conducted.

The parties may offer new information into evidence at the remand hearing. At that time, it will be determined if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing regarding documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties in advance of the hearing at their addresses as shown on the certificate of mailing for the notice of hearing.

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<sup>1</sup> Order No. 20-UI-157751 at 1.

**DECISION:** Order No. 20-UI-157751 is set aside, and this matter remanded for further proceedings consistent with this order.

S. Alba and D. P. Hettle.

**DATE of Service: February 3, 2021**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 20-UI-157751 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.

**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.

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