

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

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0042**

*Affirmed*  
*Late Request for Hearing Dismissed*

**PROCEDURAL HISTORY:** On October 23, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant received benefits to which they were not entitled and assessing a \$2,185 overpayment claimant was liable to repay to the Department (decision # 114532). On November 12, 2020, decision # 114532 became final without claimant having filed a timely request for hearing.

On November 17, 2020, claimant filed a late request for hearing. ALJ Kangas reviewed claimant's request for hearing, and on December 21, 2020, issued Order No. 20-UI-157924, dismissing claimant's request as late without a showing of good cause, subject to claimant's right to renew the request by responding to an appellant questionnaire by January 4, 2021. On January 5, 2021, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 20-UI-157924 with the Employment Appeals Board (EAB).

On January 19, 2021, ALJ Kangas mailed a letter to claimant stating that their questionnaire response was late, would not be considered, and that Order No. 20-UI-157924 remained in effect. This matter is before EAB based upon claimant's timely application for review of Order No. 20-UI-157924.

**EVIDENTIARY MATTER:** EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is claimant's late response to the appellant questionnaire, which 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, EAB Exhibit 1 will remain in the record.

**FINDINGS OF FACT:** (1) On October 23, 2020, the Department mailed decision # 114532 to claimant's address of record on file with the Department. Decision # 114532 stated, in relevant part, "If you disagree with the amount of the overpayment, you have the right to appeal this decision. Any appeal from this decision must be filed on or before November 12, 2020 to be timely." Exhibit 1 at 2.

(2) On November 17, 2020, claimant requested a hearing on decision # 114532. Exhibit 2 at 2. The request for hearing did not include an explanation regarding why the request for hearing on decision # 114532 was submitted after the November 12, 2020 deadline.

(3) On January 5, 2021, claimant filed a late response to the appellant questionnaire. In the response, claimant did not provide information explaining why claimant's request for hearing on decision # 114532 was filed late. EAB Exhibit 1.

**CONCLUSIONS AND REASONS:** Claimant's late request for hearing on decision # 114532 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 # 114532 to claimant at their address of record on October 23, 2020. The 20-day deadline for claimant to file a timely request for hearing was November 12, 2020. Claimant did not file their request for hearing until November 17, 2020. Accordingly, claimant's hearing request was late.

Claimant did not establish that factors beyond their reasonable control prevented them from filing a timely hearing request. Claimant provided no explanation for not filing their request for hearing by the November 12, 2020 deadline. Although the exact date on which claimant received decision # 114532 at their address of record is unknown, nothing in claimant's late request for hearing or late questionnaire response indicate any irregularity with respect to claimant's receipt of decision # 114532. A letter duly directed and mailed is presumed to be received in the regular course of the mail, ORS 40.135(1)(q), and claimant did not describe any circumstances suggesting that they did not receive decision # 114532 or that they did not receive it until after the November 12, 2020 deadline to request a hearing. Although a passage from claimant's questionnaire response states, "I believe on 12/2/2020 I was informed I owe," this statement most likely refers to a communication between the Department and claimant that occurred after claimant received decision # 114532, such as a Department billing statement or the like. EAB Exhibit 1 at 1. The statement cannot logically be read as asserting that claimant received decision # 114532 on December 2, 2020 because claimant filed their late request for hearing on decision # 114532 on November 17, 2020.

To any extent claimant's failure to file a timely hearing request was the result of a mistake on claimant's part, it was not an "excusable mistake" within the meaning of the administrative rules. The record does not, for example, raise a due process issue, and fails to show that any mistake was the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply.

Because claimant failed to show that factors beyond their reasonable control or an excusable mistake prevented them from filing a hearing request by the November 12, 2020 deadline, claimant failed to

establish good cause to extend the filing deadline beyond November 12, 2020. Accordingly, claimant's late request for hearing is dismissed, leaving decision # 114532 undisturbed.

**DECISION:** Order No. 20-UI-157924 is affirmed.

S. Alba and D. P. Hettle.

**DATE of Service:** January 29, 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](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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# 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 الاستئناف بأوريغون و ذلك باتباع 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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