

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0077**

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

**PROCEDURAL HISTORY:** On March 25, 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 September 29, 2020<sup>1</sup> (decision # 111726). On April 14, 2020, decision # 111726 became final without claimant having filed a timely request for hearing. On December 15, 2020, claimant filed a late request for hearing. ALJ Kangas reviewed claimant's request and on December 30, 2020, issued Order No. 20-UI-158368, dismissing claimant's request for hearing as late without a showing of good cause, but subject to claimant's right to renew the request by responding to an appellant questionnaire by January 13, 2020. On January 19, 2021, Order No. 20-UI-158368 became final without claimant having filed a timely application for review with the Employment Appeals Board (EAB). On January 27, 2021, claimant filed a late response to the appellant questionnaire and a late application for review of Order No. 20-UI-158368 with EAB. On February 1, 2021, ALJ Kangas mailed a letter stating that the Office of Administrative Hearings (OAH) would not consider claimant's questionnaire response or issue another order regarding decision # 111726 because the questionnaire response was late. This matter comes before EAB based upon claimant's January 27, 2021 application for review of Order No. 20-UI-158368.

**HISTORIA PROCESAL:** *El 25 de marzo de 2020, el Departamento de Empleo de Oregon (el Departamento) envi6 notificaci6n de una decisi6n administrativa concluyendo que el reclamante dej6 el trabajo sin una buena causa y fue descalificado de recibir beneficios de desempleo a partir del 29 de septiembre de 2020<sup>2</sup> (decisi6n # 111726). La decisi6n se convirti6 en final el 14 de abril de 2020 sin que el reclamante hubiera presentado una aplicaci6n oportuna para una audiencia. El 15 de diciembre de 2020, el reclamante present6 una aplicaci6n tardía para una audiencia. La Jueza Administrativa*

<sup>1</sup> Because decision # 111726 was issued on March 25, 2020, and the decision states that the work separation was on October 2, 2019, the effective date of disqualification stated on decision # 111726 is incorrect and should be September 29, **2019**.

<sup>2</sup> *Debido a que la decisi6n # 111726 fue emitida el 25 de marzo de 2020, y la decisi6n dice que la separaci6n de trabajo fue el 2 de octubre de 2019, la fecha efectiva de descalificaci6n indicada en la decisi6n # 111726 es incorrecta y debe ser el 29 de septiembre de 2019.*

*Kangas revisó la aplicación tardía del reclamante y el 30 de diciembre de 2020, emitió la Orden No. 20-UI-158368 rechazando la aplicación del reclamante porque la aplicación era tarde y no mostró que el reclamante tenía buena causa para presentar la aplicación tarde. La orden también dio al reclamante la oportunidad de responder a un cuestionario antes del 13 de enero de 2021 sobre por qué el reclamante presentó su aplicación tarde. Orden No. 20-UI-158368 se convirtió en final el 19 de enero de 2021 sin que el reclamante hubiera presentado una aplicación de revisión oportuna a La Junta de Apelaciones de Empleo (EAB). El 27 de enero de 2021, el reclamante presentó una respuesta tardía al cuestionario y una aplicación tardía de revisión de Orden No. 20-UI-158368 a EAB. El 1 de febrero de 2021, la Jueza Administrativa Kangas envió por correo una carta indicando que la Oficina de Audiencias Administrativas (OAH) no consideraría la respuesta del reclamante al cuestionario ni emitiría otra orden con respecto a la decisión # 111726 porque la respuesta al cuestionario era tarde. Este asunto se presenta ante la EAB basándose en la aplicación de revisión de la Orden No. 20-UI-158368 que el reclamante presentó el 27 de enero de 2021.*

**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 response to the appellant questionnaire, marked as EAB Exhibit 1, a copy of which has been 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 will remain in the record.

**FINDING OF FACT:** (1) Order No. 20-UI-158368, mailed to claimant on December 30, 2020, stated, “You may appeal this decision by filing the attached form Application for Review with the Employment Appeals Board within 20 days of the date that this decision is mailed.” 20-UI-158368 at 2. Order No. 20-UI-158368 also stated on its Certificate of Mailing, “Any party may appeal this Order by filing a Request for Review with the Employment Appeals Board no later than January 19, 2021.” The Order and the Certificate of Mailing were entirely in English.

**CONCLUSIONS AND REASONS:** Claimant’s late application for review is allowed. Order No. 20-UI-158368 is reversed and remanded for a hearing on whether claimant’s late request for hearing on decision # 111726 should be allowed and, if so, the merits of that decision.

**CONCLUSIONES Y RAZONES:** *La Orden No. 20-UI-158368 se pone a un lado, y esta materia se remite para una audiencia para determinar si se permitirá la aplicación tardía para una audiencia sobre la decisión # 111726, y si se permite, entonces una audiencia sobre el mérito de la decisión.*

**Late Application for Review.** An application for review is timely if it is filed within 20 days of the date that OAH mailed the order for which review is sought. ORS 657.270(6); OAR 471-041-0070(1) (May 13, 2019). The 20-day filing period may be extended a “reasonable time” upon a showing of “good cause.” ORS 657.875; OAR 471-041-0070(2). “Good cause” means that factors or circumstances beyond the applicant’s reasonable control prevented timely filing. OAR 471-041-0070(2)(a). A “reasonable time” is seven days after the circumstances that prevented the timely filing ceased to exist. OAR 471-041-0070(2)(b). A late application for review will be dismissed unless it includes a written statement describing the circumstances that prevented a timely filing. OAR 471-041-0070(3).

The application for review of Order No. 20-UI-158368 was due January 19, 2021. Because claimant did not file his application for review until January 27, 2021, the application for review was late. Claimant provided a written statement with the application for review which stated that he “was very busy with [his] house burning down and all the insurance paperwork.” EAB Exhibit 1. It is not clear if or how the loss of claimant’s home may have prevented claimant from filing the application for review on time. However, the Order, Certificate of Service, and the accompanying documents provided to claimant were in English, and claimant stated on his request for hearing in Spanish that he required a Spanish interpreter for a hearing. Claimant’s failure to readily understand his appeal rights because they were not provided to him in Spanish, including the deadline to file an application for review, was likely a factor or circumstance beyond his reasonable control that prevented a timely filing. Given the short period of time between the date of the Order and the date claimant filed his late application for review, EAB infers that claimant filed the late application for review within a reasonable time after learning his appeal rights. Claimant’s late application for review is allowed.

**Late Request for Hearing.** 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.

In his response to the appellant questionnaire, claimant stated that he filed his request for hearing late because he “was very busy with [his] house burning down and all the insurance paperwork.” EAB Exhibit 1. Claimant did not provide details regarding how his house fire resulted in him filing his request for hearing late. Claimant’s response to the appellant questionnaire suggests that claimant may have filed his request for hearing late due to factors beyond his reasonable control or an excusable mistake. However, further inquiry is necessary to make that determination. The inquiry should include whether claimant received decision # 111726 and if he did not, when he became aware of the decision, when the factors that prevented a timely filing ceased to exist, and whether claimant’s December 17, 2020 hearing request was made within a “reasonable time” after the circumstances that prevented a timely filing ceased to exist. The record must also be developed to show if claimant understood the decision would result in a denial of benefits even though the decision incorrectly stated that the disqualification began on September 29, 2020.

Order No. 21-UI-158831 therefore is reversed, and this matter remanded for a hearing on whether claimant’s late request for hearing on decision # 195738 should be allowed and, if so, the merits of that decision.

**DECISION:** Order No. 20-UI-158368 is set aside, and this matter remanded for further proceedings consistent with this order. *La Orden de la Audiencia 20-UI-158368 se pone a un lado, y esta materia se remite para otros procedimientos constantes con esta orden.*

S. Alba and D. P. Hettle.

**DATE of Service / FECHA de Notificación: February 26, 2021 / 26 de febrero de 2021**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 20-UI-158368 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 No. 20-UI-158368, 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 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**  
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