

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0200**

*Affirmed*  
*Late Request for Hearing Dismissed*

**PROCEDURAL HISTORY:** On September 22, 2020 the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct, disqualifying claimant from receiving unemployment insurance benefits effective April 19, 2020 (decision # 115243). On October 13, 2020, decision # 115243 became final without claimant having filed a timely request for hearing.

On January 22, 2021, claimant filed a late request for hearing. ALJ Kangas reviewed claimant's request, and on February 8, 2021 issued Order No. 21-UI-160625, dismissing the 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 February 22, 2021. On March 1, 2021, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 21-UI-160625 with the Employment Appeals Board (EAB).

On March 17, 2021, ALJ Kangas mailed a letter to claimant stating that because their questionnaire response was late, it would not be considered, another order would not be issued, and that Order No. 21-UI-160625 remained in effect. This matter is before EAB based upon claimant's timely application for review of Order No. 21-UI-160625 on March 1, 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 late 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 September 22, 2020, the Department mailed decision # 115243 to claimant's address of record on file with the Department. Decision # 115243 stated, in relevant part,

“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 October 13, 2020.” Exhibit 1 at 2. Decision # 115243 provided a mailing address, three telephone numbers, and a fax number for use to contact the Department. Exhibit 1 at 1.

(2) Claimant received decision # 115243 at some point after it was mailed.

(3) On January 22, 2021, claimant filed a request for hearing on decision # 115243. Exhibit 2 at 2.

**CONCLUSIONS AND REASONS:** Claimant’s late request for hearing on decision # 115243 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 # 115243 to claimant at their address of record on September 22, 2020. The 20-day deadline for claimant to file a timely request for hearing was October 13, 2020. Claimant did not file their request for hearing until January 22, 2021. Accordingly, claimant’s hearing request was late.

In their appellant questionnaire response, claimant asserted that they had good cause to file their request for hearing late because they spoke to someone, apparently a Department representative, and was informed that they could try to appeal but the appeal would likely be unsuccessful. Specifically, claimant asserted, “I was made to believe I was not gonna have good enough reason to get an appeal so it ended up late.” EAB Exhibit 1 at 2. Claimant further stated, “I did not do it before the original deadline because I was told that I could ‘try’ to appeal but it was likely going to be denied.” EAB Exhibit 1 at 2. This evidence is not sufficient to establish good cause for claimant’s late request for hearing.

Claimant did not establish that factors beyond their reasonable control prevented them from filing a timely hearing request. As a preliminary matter, nothing in claimant’s submissions indicate that they did not receive decision # 115243 or that they did not receive it until after the October 13, 2020 deadline to request a hearing. The exact date on which claimant received decision # 115243 is unknown, but claimant did not dispute or rebut that they received the decision, and therefore is presumed to have received it in the regular course of the mail. OAR 137-003-0520(10) (January 31, 2012) (“Documents sent through the U.S. Postal Service by regular mail are presumed to have been received by the addressee, subject to evidence to the contrary.”); *see also* ORS 40.135(1)(q). Decision # 115243 informed claimant in clear and unequivocal terms that claimant had a right to appeal if they disagreed with the decision, and that October 13, 2020 was the deadline for doing so. Although a Department representative may have commented that claimant was unlikely to succeed on appeal, nothing claimant alleged the Department representative to have told claimant contradicted the information claimant received on the decision itself stating that claimant had a right to appeal and that October 13, 2020 was the deadline for doing so. The record fails to show that it was beyond claimant’s reasonable control to

carefully read decision # 115243 and, if they disagreed with it, contact the Department before the October 13, 2020 deadline to timely request a hearing.

To the extent that claimant's failure to file a timely hearing request was the result of a mistake on claimant's part because claimant relied on a Department representative's opinion that an appeal was unlikely to succeed, the mistake 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. In particular, it was not reasonable for claimant to fail to request a hearing by the deadline in reliance on the Department representative's alleged comment about claimant's likelihood of success. There is no evidence that claimant was told not to appeal. Claimant asserted only that the Department representative stated that claimant could try to appeal but his appeal was unlikely to succeed. Given that the representative acknowledged claimant's appellate rights and that decision # 115243 clearly articulated them along with the deadline to timely request an appeal, failing to appeal based on the representative's comments was not reasonable, and therefore, was not an excusable mistake.

Because claimant failed to show that factors beyond their reasonable control or an excusable mistake prevented them from filing a hearing request on decision # 115243 by the October 13, 2020 deadline, claimant failed to establish good cause to extend the filing deadline beyond that date. Accordingly, claimant's late request for hearing on decision # 115243 is dismissed.

**DECISION:** Order No. 21-UI-160625 is affirmed.

S. Alba and D. P. Hettle.

**DATE of Service:** March 30, 2021

**NOTE:** This decision dismisses a late request for hearing on a decision that denied payment of your Unemployment Insurance (UI) benefits.

However, you may be eligible for Pandemic Unemployment Assistance (PUA) benefits for the period you are not eligible for other benefits as long as you are unable to work, unavailable for work, or unemployed due to the COVID-19 public health emergency. PUA is a new unemployment benefits program available through the Oregon Employment Department in response to the COVID-19 pandemic.

Visit <https://unemployment.oregon.gov> for more information, to apply for PUA, or to contact the Oregon Employment Department using the "Contact Us" form. You can also apply for PUA by calling 1-833-410-1004, but please be aware that the PUA staff cannot answer questions about this decision that denies payment of regular Unemployment Insurance (UI) benefits.

**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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# 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.

**Employment Appeals Board - 875 Union Street NE | Salem, OR 97311**  
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711  
[www.Oregon.gov/Employ/eab](http://www.Oregon.gov/Employ/eab)

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