

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0209**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On December 17, 2020, the Oregon Employment Department (the Department) served notice of a Wage and Potential Benefit Report concluding claimant did not qualify for unemployment insurance benefits because they had not earned at least six times their weekly benefit amount since the beginning of their previous unemployment claim. On December 27, 2020, the December 17, 2020 Wage and Potential Benefit Report decision became final without claimant having filed a timely request for hearing. On January 19, 2021, claimant filed a late request for hearing.

On February 8, 2021, ALJ Kangas considered claimant's request and issued Order No. 21-UI-160574, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by February 22, 2021. On February 23, 2021, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 21-UI-160574 with the Employment Appeals Board (EAB). On March 17, 2021, ALJ Kangas considered claimant's late response to the appellant questionnaire and mailed a letter to claimant stating that because claimant's response was late, the Office of Administrative Hearings (OAH) would not consider the response or issue another order regarding the matter, and Order No. 21-UI-160574 therefore remained in effect. This matter comes before EAB based upon claimant's February 23, 2021 application for review of Order No. 21-UI-160574.

**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, 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 will remain in the record.

**CONCLUSIONS AND REASONS:** Order No. 21-UI-160574 is set aside and this matter remanded for a hearing on whether claimant's late request for hearing on the December 17, 2020 Wage and Potential Benefit Report decision should be allowed and, if so, the merits of that decision.

ORS 657.266 provides that the Department's initial determination of eligibility and amount of benefits becomes final unless a party files a request for redetermination or hearing within 10 days after the date the decision is mailed. ORS 657.875 provides that the 10-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 deadline to file a timely request for hearing on the December 17, 2020 Wage and Potential Benefit Report decision was December 27, 2020. Claimant filed their request for hearing on January 19, 2021. Therefore, the request for hearing was late. However, in their response to the appellant questionnaire, claimant suggested they did not receive the December 17, 2020 Wage and Potential Benefit Report decision stating, "I did not receive the notice in the mail," and, "I did not file a hearing request before the deadline, as I never received the notice." EAB Exhibit 1 at 1. Claimant also indicated that they were prompted to file their request for hearing because "I gave up calling and trying to reach someone, as I didn't know my status[.]" and "[o]nly when my online requests did not go through, I filed." EAB Exhibit 1 at 2.

These statements suggest that a factor beyond claimant's reasonable control or an excusable mistake may have prevented them from filing a timely hearing request. Nevertheless, the record does not contain sufficient information to show if there was good cause to extend the 10-day deadline to request a hearing, and if so, whether claimant filed their request for hearing within a reasonable time. For these reasons, the matter must be remanded for a hearing to develop the record to determine if the late request for hearing should be allowed, and if so, the merits of the December 17, 2020 Wage and Potential Benefit Report decision.

On remand, the record must be developed to show if factors beyond claimant's reasonable control, or an excusable mistake, caused claimant to miss the December 27, 2020 deadline to file a timely hearing request. Such inquiry should include, but not be limited to, questions regarding claimant's statement that they did not receive the December 17, 2020 Wage and Potential Benefit Report decision, and when, if ever, claimant learned of the December 17, 2020 Wage and Potential Benefit Report decision and their right to request a hearing on that decision. To the extent the record on remand establishes that a factor beyond claimant's reasonable control or an excusable mistake prevented them from timely requesting a hearing, the record must also be developed to determine whether claimant filed their request for hearing within seven days after those factors ceased to exist. The ALJ should also ask any other questions that develop in the course of conducting the hearing.

Order No. 21-UI-160574 therefore is reversed, and this matter remanded for a hearing on whether claimant's late request for hearing should be allowed and, if so, the merits of the December 17, 2020 Wage and Potential Benefit Report decision.

**DECISION:** Order No. 21-UI-160574 is set aside, and this matter remanded for further proceedings consistent with this order.

S. Alba and D. P. Hettle.

**DATE of Service:** March 29, 2021

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-160574 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 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 الإستئناف 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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