

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0268**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On July 22, 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 April 5, 2020 (decision # 104740). Claimant filed a timely request for hearing. On August 19, 2020, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for August 28, 2020 at 9:30 a.m. On August 28, 2020, claimant failed to appear at the hearing, and ALJ Murdock issued Order No. 20-UI-153469, dismissing the hearing request due to claimant's failure to appear. On September 17, 2020, Order No. 20-UI-153469 became final without claimant having filed a timely request to reopen the hearing or an application for review of Order No. 20-UI-153469 with the Employment Appeals Board (EAB). On February 11, 2021, claimant filed a late request to reopen the August 28, 2020 hearing. ALJ Kangas considered claimant's request, and on April 8, 2021 issued Order No. 21-UI-164396, denying claimant's request to reopen the hearing as late. On April 12, 2021, claimant filed an application for review of Order No. 21-UI-164396 with EAB.

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.

**FINDING OF FACT:** (1) Order No. 20-UI-153469 stated, "If you did not appear at the hearing, you may request to reopen the hearing. . . . Your request to reopen the hearing must . . . be filed within 20 days of when the order from the hearing you missed was mailed, or else show that factors or circumstances beyond your reasonable control prevented you from filing your reopen request within that time, in which case it must also show that you filed your hearing request within seven days of when those factors or circumstances ceased to exist." Order No. 20-UI-153469 at 2.

**CONCLUSIONS AND REASONS:** Order No. 21-UI-164396 is set aside and the matter is remanded for a hearing on whether claimant's late request to reopen the August 28, 2020 hearing should be allowed, and if so, whether the hearing should be reopened.

ORS 657.270(5) provides that any party who failed to appear at a hearing may request to reopen the hearing, and the request will be allowed if it was filed within 20 days of the date the hearing decision was issued and shows good cause for failing to appear. The period within which a party may request reopening may be extended if the party requesting reopening has good cause for failing to request reopening within the time allowed, and acts within a reasonable time. OAR 471-040-0041(1) (February 10, 2012). "Good cause" exists when an action, delay, or failure to act arises from an excusable mistake or from factors beyond an applicant's reasonable control. OAR 471-040-0041(2). "A reasonable time," is seven days after the circumstances that prevented a timely filing ceased to exist. OAR 471-040-0041(3). The party requesting reopening shall set forth the reason(s) for filing a late request to reopen in a written statement, which OAH shall consider in determining whether good cause exists for the late filing, and whether the party acted within a reasonable time. OAR 471-040-0041(4).

Claimant did not file their request to reopen the hearing within 20 days of August 28, 2020, the date OAH issued Order No. 20-UI-153469. As a result, under OAR 471-040-0041, claimant must show: (1) that they had good cause for failing to request reopening of the hearing by the timely filing deadline, and (2) that they filed their request to reopen within seven days after the circumstances that prevented them from filing the request by the deadline had ceased. In their request to reopen, claimant explained that claimant "never g[ot] a letter." Exhibit 5. It is possible to interpret this statement to mean that claimant did not receive in the mail the notice of the August 28, 2020 hearing or Order No. 20-UI-153469, perhaps because OAH mailed the documents to an incorrect address. If this was the case, it could mean that claimant did not know they missed the August 28, 2020 hearing or the deadline to file a request to reopen it. This, in turn, may be sufficient to establish good cause to extend the period within which claimant could file their request to reopen, so long as claimant acted within a "reasonable time" in filing the late request to reopen.

On remand, inquiry should be made as to whether claimant ever received the notice of the August 28, 2020 hearing that was mailed on August 19, 2020 or Order No. 20-UI-153469, and if so, when they received them. The ALJ should also ask whether claimant otherwise had notice of either the hearing scheduled for August 28, 2020 or the timely filing deadline to request a reopening of that hearing; and if so, why claimant failed to appear at the hearing and to meet the timely filing deadline to reopen the hearing. The record should also be developed as to whether claimant's February 11, 2021 late request to reopen was filed within the seven-day "reasonable time" period after the circumstances that prevented claimant from filing a timely request to reopen ceased to exist. The ALJ should also ask any other questions that develop in the course of conducting the hearing.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure a sufficiently developed record into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary for a determination of whether claimant had good cause to file a late request to reopen the August 28, 2020 hearing, Order No. 21-UI-164396 is reversed, and this matter is remanded for development of the record.

The remand hearing will be to determine if claimant had good cause for filing their request to reopen late and acted within a reasonable time after the circumstances that prevented a timely filing ceased to exist. If claimant meets that burden, the next issue would be whether claimant had good cause to reopen the August 28, 2020 hearing.<sup>1</sup> If the ALJ finds that claimant both had good cause to file the late request to reopen the hearing and had good cause to reopen the hearing, only then would the ALJ have jurisdiction to conduct a hearing on the merits of decision # 104740.<sup>2</sup>

**DECISION:** Order No. 21-UI-164396 is set aside, and this matter remanded for further proceedings consistent with this order.

S. Alba and D. P. Hettle.

**DATE of Service:** April 20, 2021

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-164396 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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<sup>1</sup> ORS 657.270(5) provides that any party who failed to appear at a hearing may request to reopen the hearing, and the request will be allowed if it was filed within 20 days of the date the hearing decision was issued and shows good cause for failing to appear. “Good cause” exists when the requesting party’s failure to appear at the hearing arose from an excusable mistake or from factors beyond the party’s reasonable control. OAR 471-040-0040(2) (February 10, 2012). The party requesting reopening shall set forth the reason(s) for missing the hearing in a written statement, which the Office of Administrative Hearings (OAH) shall consider in determining whether good cause exists for failing to appear at the hearing. OAR 471-040-0040(3).

<sup>2</sup> A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless they prove, by a preponderance of the evidence, that they had good cause for leaving work when they did. ORS 657.176(2)(c); *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). “Good cause . . . is such that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave work.” OAR 471-030-0038(4) (September 22, 2020). “[T]he reason must be of such gravity that the individual has no reasonable alternative but to leave work.” OAR 471-030-0038(4). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P3d 722 (2010). A claimant who quits work must show that no reasonable and prudent person would have continued to work for their employer for an additional period of time.



# 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.

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