

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0306**

*Affirmed*  
*Late Requests for Hearing Dismissed*

**PROCEDURAL HISTORY:** On October 2, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work and was therefore ineligible to receive unemployment insurance benefits for the weeks including April 5, 2020 through June 13, 2020 (decision # 93855). On October 22, 2020, decision # 93855 became final without claimant having filed a request for hearing. On November 18, 2020, the Department served notice of an administrative decision, based in part on decision # 93855, concluding that claimant received benefits to which claimant was not entitled and assessing an overpayment of \$4,506 in regular unemployment and Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay to the Department by deduction from future benefits (decision # 140417). On December 8, 2020, decision # 140417 became final without claimant having filed a request for hearing.

On January 21, 2021, claimant filed a late request for hearing on decisions # 93855 and 140417. ALJ Kangas considered claimant's request and on February 17, 2021, issued Order No. 21-UI-161133 dismissing claimant's late request for hearing on decision # 93855 as late without a showing of good cause, subject to claimant's right to renew the request by responding to an appellant questionnaire by March 3, 2021. On February 18, 2021, ALJ Kangas issued Order No. 21-UI-161132 dismissing claimant's late request for hearing on decision # 140417 as late without a showing of good cause, subject to claimant's right to renew the request by responding to an appellant questionnaire by March 4, 2021. On March 5, 2021, claimant filed a late response to the appellant questionnaire with the Office of Administrative Hearings (OAH), and a timely application for review of Orders No. 21-UI-161133 and 21-UI-161132 with the Employment Appeals Board (EAB). On April 17, 2021, ALJ Kangas mailed letters to claimant stating that because claimant's response to the questionnaire was late, OAH would not consider it or issue other orders, and that Orders No. 21-UI-161133 and 21-UI-161132 remained in effect. This matter is before EAB based upon claimant's timely application for review of Orders No. 21-UI-161133 and 21-UI-161132.

**EVIDENTIARY MATTER:** EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of 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.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 21-UI-161133 and 21-UI-161132. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2021-EAB-0305 and 2021-EAB-0306).

**FINDINGS OF FACT:** (1) In September 2020, claimant was evacuated from their home due to smoke in Southern Oregon. In October 2020, claimant returned to their home after the smoke “died down.” EAB Exhibit 1 at 2.

(2) On October 2, 2020, the Department mailed decision # 93855 to claimant’s address of record on file with the Department. Decision # 93855 stated, “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 22, 2020.” 2021-EAB-0305 Exhibit 1 at 2. Claimant received decision # 93855 when they returned to their home in October 2020.

(3) On November 18, 2020, the Department mailed decision # 140417 to claimant’s address of record on file with the Department. Decision # 140417 stated, “Any appeal of this decision must be filed on or before December 8, 2020 to be timely.” 2021-EAB-0306 Exhibit 1 at 2. Claimant received decision # 140417 in the regular course of the mail.

(4) Claimant did not open the mail containing decisions # 93855 and 140417 until January 2021. Claimant did not “catch up” on opening their mail for “months” after returning to their home in October 2020. EAB Exhibit 1 at 2.

**CONCLUSIONS AND REASONS:** Claimant’s late requests for hearing are 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. A letter duly directed and mailed was received in the regular course of the mail. ORS 40.135(1)(q).

Claimant’s request for hearing on decisions # 93855 and 140417 was late. The Department mailed decision # 93855 to claimant at their address of record on October 2, 2020. The 20-day deadline for claimant to file a timely request for hearing on decision # 93855 was October 22, 2020. The Department mailed decision # 140417 to claimant on November 18, 2020. The 20-day deadline for claimant to file a timely request for hearing on decision # 140417 was December 8, 2020. Claimant did not file their request for hearing on both decisions until January 22, 2021. Accordingly, claimant’s hearing request for both decisions was late. It is necessary to determine if claimant requested the hearings within a reasonable time upon a showing of good cause to extend the hearing deadlines.

Claimant's late request for hearing on decision # 93855 must be dismissed because claimant did not file their request for hearing within a reasonable time after receiving that decision. The record shows that claimant more likely than not had good cause to extend the 20-day deadline to request a hearing for decision # 93855 because claimant had been evacuated from their home, and did not return until October 2020. Being evacuated from their home was a factor beyond claimant's reasonable control. However, the 20-day deadline may be extended only seven days after the factor that prevented a timely filing ceased to exist. *See* OAR 471-040-0010. Even assuming that claimant returned to their home on October 31, 2020 (the latest date in October 2020), extending the deadline for seven days after October 31, 2020 would have been November 7, 2020. Claimant filed their request for hearing on January 21, 2021, which was after November 7, 2020. Claimant asserted in their late response to the appellant questionnaire, "As an overwhelmed single mom, it took me months to catch up on mail." EAB Exhibit 1. Claimant's assertion does not show that the ability to open one's mail was a factor beyond claimant's reasonable control. Therefore, claimant's failure to open their mail until January 2021 was not good cause to extend the 20-day deadline to request a hearing.

The record does not show that claimant had good cause to extend the deadline to request a hearing for decision # 140417 beyond the date stated on that decision, December 8, 2020. Claimant returned to their home before the Department mailed decision # 140417. Failing to open their mail was not a factor beyond claimant's reasonable control that established good cause to extend the deadline to request a hearing on decision # 140417.

To the extent claimant's failure to open their mail until January 2021 was the result of a mistake on claimant's part, it was not an "excusable mistake" within the meaning of the administrative rules because it did not, for example, raise a due process issue, and was not the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply.

For those reasons, claimant failed to show good cause for their late requests for hearing on decisions # 93855 and 140417, and the requests are therefore dismissed.

**DECISION:** Orders No. 21-UI-161133 and 21-UI-161132 are affirmed.

S. Alba and D. P. Hettle.

**DATE of Service:** April 23, 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.

**NOTE:** EAB Decision 2021-EAB-0305 affirms the dismissal of a decision that denies 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.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



# 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  
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El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.