

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0324**

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.

*Reversed*  
*Request to Reopen Allowed*  
*Merits Hearing Required*

**PROCEDURAL HISTORY:** On November 10, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving unemployment insurance benefits effective March 15, 2020 (decision # 82348). Claimant filed a timely request for hearing. On January 14, 2021, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for February 1, 2021 at 9:30 a.m. On February 1, 2021, claimant failed to appear for the hearing, and ALJ Amesbury issued Order No. 21-UI-160147 dismissing claimant's request for hearing for failing to appear. On February 5, 2021, claimant filed a timely request to reopen the February 1, 2021 hearing. On March 24, 2021, OAH mailed notice of a hearing scheduled for April 12, 2021 to consider claimant's request to reopen, and if allowed, the merits of decision # 82348. On April 12, 2021, ALJ Amesbury conducted a Vietnamese interpreted hearing and issued Order No. 21-UI-164629, denying claimant's request to reopen the February 1, 2021 hearing. On April 22, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** EAB did not consider claimant's written argument when reaching this decision because she did not include a statement declaring that she provided a copy of her argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019).

**FINDINGS OF FACT:** (1) Claimant received the notice of the hearing scheduled for February 1, 2021 before the hearing. Claimant relied on her daughter to assist her with understanding documents written in English. Claimant saw the date and time of the hearing on the notice, and planned to participate in the hearing. Claimant and her daughter called the Department and a Department representative told claimant that there would be a Vietnamese interpreter for the hearing. Claimant's daughter interpreted the notice

of hearing for claimant, but disregarded the portion of the notice that stated that claimant must call at the time of the hearing, believing that because it was an interpreted hearing, the interpreter would call claimant. Claimant was accustomed to interpreters in places like doctors' offices calling her before her appointments. Claimant did not provide her telephone number to OAH.

(2) On February 1, 2021, shortly after the hearing was scheduled to begin, claimant had not received a call from an interpreter. Claimant reviewed the notice of hearing and understood that she had been required to call the OAH. Claimant "got scared" and called her daughter for assistance. Transcript at 6. Claimant's daughter asked claimant to look for "any phone number" on the notice of hearing. Transcript at 6. Claimant gave a number from the notice to her daughter, who called the number, but "it was too late." Transcript at 6.

**CONCLUSIONS AND REASONS:** Claimant had good cause to reopen the February 1, 2021 hearing, and a hearing on the merits of decision # 82348 is required.

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).

The order under review denied claimant's motion to reopen the February 1, 2021 hearing, concluding that claimant did not understand the implications of the notice of hearing when she received it, and that Oregon rule provides that failing to understand the implications of a notice when it is received is not good cause to reopen a hearing. Order No. 21-UI-164629 at 4 (citing OAR 471-040-0040(2)(b)(B)). The order reasoned that claimant's assumption that the interpreter would call her was not unreasonable, but was "undercut" by the express directions on the notice that claimant call for the hearing, and that she did not provide the Department or OAH with her telephone number before the hearing. Order No. 21-UI-164629 at 4. However, the order's conclusion is not supported by the record.

Claimant had good cause to reopen the February 1, 2021 hearing because her failure to appear arose from claimant's excusable mistake. Claimant missed the hearing because she mistakenly believed that an interpreter would call her for the hearing. A number of factors contributed to the excusable nature of claimant's mistake regarding the interpreter. Claimant's daughter, in interpreting the notice of hearing to claimant, ignored the section advising that claimant call in for the hearing, because claimant's daughter believed the interpreter would call claimant, and conveyed that belief to claimant.

Claimant herself had interpreters call her for appointments in the past, and when she spoke with the Department, they corroborated her misunderstanding by telling her that an interpreter would help her with her hearing. It was logical for claimant to assume that the interpreter for her OAH hearing would act similarly to other interpreters and call her before the hearing began. Nor does claimant having read the notice of hearing after the time of hearing and understood that she was required to call in to the

hearing does make her mistake of relying on her daughter's understanding of the notice of hearing less excusable.

The record shows that claimant's mistaken belief that the interpreter would call, which resulted in claimant failing to appear for the hearing, was an excusable mistake. Claimant has therefore shown good cause to reopen the February 1, 2021 hearing. Accordingly, claimant's request to reopen the February 1, 2021 hearing is granted, and claimant is entitled to a hearing on the merits of decision # 82348.

**DECISION:** Order No. 21-UI-164629 is set aside, as outlined above.

D. Hettle and A. Steger-Bentz;  
S. Alba, not participating.

**DATE of Service:** May 25, 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.

**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 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.

**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)

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

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.