

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0332**

*Affirmed*  
*Late Request for Hearing Dismissed*

**PROCEDURAL HISTORY:** On January 22, 2021, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was not entitled to receive PUA benefits effective March 8, 2020. On February 11, 2021, the January 22, 2021 decision became final without claimant having filed a request for hearing. On February 16, 2021, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on March 9, 2021 issued Order No. 21-UI-162321, dismissing claimant's 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 March 23, 2021. On March 29, 2021, claimant filed a late response to the appellant questionnaire with the Office of Administrative Hearings (OAH), and a timely application for review of Order No. 21-UI-162321 with the Employment Appeals Board (EAB). On April 19, 2021, ALJ Kangas mailed a letter to claimant stating that because claimant's response to the appellant questionnaire was late, OAH would not consider it or issue another order, and that Order No. 21-UI-162321 remained in effect. This matter is before EAB based upon claimant's timely application for review of Order No. 21-UI-162321.

**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(s) will remain in the record.

**FINDINGS OF FACT:** (1) Claimant applied for PUA in April 2020. EAB Exhibit 1 at 4, 6. Claimant submitted information regarding his PUA claim to the Department and "spoke to different individuals at the [Department] [and] was not able to get an answer" regarding his PUA claim. EAB Exhibit 1 at 4. A Department representative who handled PUA claims told claimant that he "should file an appeal through

Unemployment.” EAB Exhibit 1 at 4. On January 20, 2021, claimant filed a request for hearing online to “appeal PUA denial.” Exhibit 2.

(2) On January 22, 2021, the Department mailed the Notice of Determination for PUA decision concluding that claimant was not entitled to receive PUA benefits effective March 8, 2020 to claimant’s address of record on file with the Department. The decision 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 by February 11, 2021.” Exhibit 1 at 2. Claimant received the January 22, 2021 decision in the regular course of the mail.

(3) At 4:27 p.m.<sup>1</sup> on January 27, 2021, a Department representative sent claimant an email stating that the Department had received the request for hearing claimant submitted online on January 20, 2021 and that the request was “invalid” because the Department received it on January 20, 2021, the PUA decision was not mailed until January 22, 2021, and “an appeal request cannot predate the . . . decision . . .” EAB Exhibit 1 at 7. The representative further advised claimant, “If you still wish to appeal the decision, you will need to submit a new request if you have not already done so.” EAB Exhibit 1 at 7.

(4) At 6:10 p.m. on January 27, 2021, claimant responded by email that he “was trying to appeal the decision from last march or april . . . not the new filing.” EAB Exhibit 1 at 7. At 6:50 p.m., the Department representative advised claimant that the only denial of claimant’s PUA claim that claimant would be able to appeal was issued on January 22, 2021, and that his “prior guidance” was “the only way [the Department would] be able to submit an appeal referral” for claimant. EAB Exhibit 1 at 6. Claimant read the email and asked the Department representative if he saw record of his “initial claim back in 4/20.” EAB Exhibit 1 at 6.

(5) At 8:00 p.m. on January 27, 2021, the Department representative responded to claimant by email stating:

“You only have the one claim . . . and only one formal denial. In order to process the appeal, we need you to submit a new appeal request that is after the date of that decision and preferably prior to the appeal deadline. The Office of Administrative Hearings will not accept a referral where the request was made prior to the decision date. If you wish to appeal the formal denial that was mailed on 1/22 then you will need to submit a new form entry and we will be able to proceed with the appeal referral. The claim the denial decision is on is the one that you submitted back in April of 2020.” EAB Exhibit 1 at 6.

(6) On February 16, 2021, claimant requested a hearing regarding the January 22, 2021 PUA decision.

**CONCLUSIONS AND REASONS:** Claimant’s late request for hearing on the January 22, 2021 Notice of Determination for PUA decision 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

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<sup>1</sup> All of the times noted in this decision are Pacific Standard Time.

(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).

The Department mailed the Notice of Determination for PUA decision to claimant at his address of record on January 22, 2021. Although claimant filed a request for hearing on January 20, 2021, that request for hearing could not be a request for hearing on the January 22, 2021 decision because the January 22, 2021 decision was issued two days after the January 20, 2021 request for hearing. As stated on the January 22, 2021 decision, the 20-day deadline for claimant to file a timely request for hearing on that decision was February 11, 2021. Claimant did not file his request for hearing until February 16, 2021. Accordingly, claimant’s hearing request was late.

The record does not show that factors beyond claimant’s reasonable control prevented him from filing a timely hearing request on the January 22, 2021 decision. Claimant received the January 22, 2021 decision in the regular course of the mail sometime after January 22, 2021. The January 22, 2021 decision stated that claimant had the right to appeal that decision, and that his request for appeal was due by February 11, 2021. The record shows claimant knew how to request a hearing because he requested a hearing before the January 22, 2021 decision was issued. Claimant stated on his appellant questionnaire response that he did not file his hearing request before the deadline because he was “utterly confused.” EAB Exhibit 1 at 3. However, in addition to the appeal information on the January 22, 2021 decision, a Department representative informed claimant by email on January 27, 2021 that the request for hearing that claimant filed on January 20, 2021 was “invalid” and that if claimant wished to appeal the January 22, 2021 decision regarding his claim for PUA, he would need to submit a new appeal form. Claimant did not show that factors beyond his reasonable control prevented him from doing this.

Although claimant’s belief that there had been a decision regarding his claim for PUA before his January 20, 2021 (“invalid”) request for hearing and that he had already requested a hearing regarding that decision was a mistake, it was not an “excusable mistake” within the meaning of the administrative rules. The Department representative told claimant three times in their January 27, 2021 emails to claimant that he had to submit a new request for hearing if he wished to appeal the January 22, 2021 decision about his PUA benefits. Nor did claimant’s mistake, 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.

Because claimant failed to show that factors beyond his reasonable control or an excusable mistake prevented him from filing a hearing request by the February 11, 2021 deadline, claimant failed to establish good cause to extend the filing deadline for a hearing request beyond that date. Accordingly, claimant’s late request for hearing is dismissed.

**DECISION:** Order No. 21-UI-162321 is affirmed.

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

**DATE of Service:** May 6, 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](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 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.

**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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