

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0438**

*Late Application for Review Allowed  
Reversed & Remanded*

**PROCEDURAL HISTORY:** On December 23, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and was disqualified from receiving unemployment insurance benefits effective September 6, 2020 (decision # 92714). Claimant filed a timely request for hearing. On March 17, 2021, ALJ Davis issued Order No. 21-UI-162900, dismissing claimant's request for hearing based on claimant's withdrawal of their hearing request. On April 6, 2021, Order No. 21-UI-156414 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On June 3, 2021, claimant filed a late application for review with (EAB).

**EVIDENTIARY MATTER:** EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is contained in the written argument claimant submitted with their application for review. This additional evidence has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. Any party that objects to the admission of EAB Exhibit 1 into the record 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, EAB Exhibit 1 will remain in the record.

**FINDINGS OF FACT:** (1) On December 24, 2020, claimant submitted a request for hearing on decision # 92714 to the Office of Administrative Hearings (OAH).<sup>1</sup>

(2) On March 12, 2021, a Department representative called claimant and informed claimant that submitting proof of a sufficient amount of earnings after the work separation described in decision # 92714 would end claimant's disqualification and claimant would receive benefits for the weeks they claimed after the work separation. EAB Exhibit 1 at 1. Claimant told the representative that claimant had requested a hearing on decision # 92714, and was waiting for a hearing date. EAB Exhibit 1 at 1. The representative instructed claimant to cancel claimant's request for hearing. EAB Exhibit 1 at 1.

<sup>1</sup> Claimant submitted an additional request for hearing on decision # 92714 to OAH on January 7, 2021.

(3) Claimant emailed the representative with proof of earnings in the amount requested by the representative and mentioned that OAH “were only accepting emails” to make withdrawal requests. EAB Exhibit 1 at 5. The representative responded, “if that’s what they said to do than [sic] great. I’ll get your paystubs in the right place to get you paid for those weeks.” EAB Exhibit 1 at 6. On March 17, 2021, the representative emailed claimant requesting claimant resend their proof of earnings. EAB Exhibit 1 at 7. Claimant did so and asked “when will I know this has gone through? . . . will I just receive the checks in the mail?” EAB Exhibit 1 at 10. The representative stated that claimant should receive benefits “as direct deposit” but did not know when. EAB Exhibit 1 at 11.

(4) On March 17, 2021, claimant emailed OAH requesting to withdraw the request for hearing. On March 17, 2021, based on claimant’s request to withdraw, Order No. 21-UI-162900 was issued, which dismissed claimant’s request for hearing.

(5) On April 6, 2021, Order No. 21-UI-162900 became final without claimant having filed an application for review. In mid-April 2021, claimant contacted the Department because they had not received any benefits. EAB Exhibit 1 at 1. Claimant attempted to call the Department but was unable to get through. EAB Exhibit 1 at 1. Claimant also emailed and called the direct line of the Department representative to whom claimant provided their proof of earnings but was unable to contact that representative. EAB Exhibit 1 at 1.

(6) On May 26, 2021, claimant reached a different Department representative and informed them that the previous Department representative had instructed claimant to withdraw the hearing request. EAB Exhibit 1 at 1. The next day, claimant spoke to another Department representative, who attempted to determine whether the Department could reinstate claimant’s request for hearing. EAB Exhibit 1 at 2. On June 2, 2021, a Department representative informed claimant that claimant needed to file a late application for review of Order No. 21-UI-162900 to pursue the matter further. On June 3, 2021, claimant filed a late application for review of Order No. 21-UI-162900.

**CONCLUSIONS AND REASONS:** Claimant’s late application for review is allowed. Order No. 21-UI-162900 is reversed and the matter remanded for a hearing on the merits of decision # 92714.

**Late Application for Review.** An application for review is timely if it is filed within 20 days of the date that the Office of Administrative Hearings (OAH) mailed the order for which review is sought. ORS 657.270(6); OAR 471-041-0070(1) (May 13, 2019). The 20-day filing period may be extended a “reasonable time” upon a showing of “good cause.” ORS 657.875; OAR 471-041-0070(2). “Good cause” means that factors or circumstances beyond the applicant’s reasonable control prevented timely filing. OAR 471-041-0070(2)(a). A “reasonable time” is seven days after the circumstances that prevented the timely filing ceased to exist. OAR 471-041-0070(2)(b). A late application for review will be dismissed unless it includes a written statement describing the circumstances that prevented a timely filing. OAR 471-041-0070(3).

The deadline for claimant to timely file their application for review was April 6, 2021. Claimant filed their application for review on June 3, 2021, making the application for review late. Although claimant’s application for review was late, claimant has shown good cause to extend the filing period a reasonable time.

During the period when claimant could have filed a timely application for review, claimant was operating under the mistaken belief, based on representations from the Department representative, that claimant's proof of earnings would end their disqualification and claimant would receive benefits. The representative instructed claimant to withdraw from the hearing, claimant did so, the hearing request was dismissed, and claimant reasonably believed based on the Department's representations that the matter had been resolved. Claimant therefore had no reason to believe that they would need to seek review of Order No. 21-UI-162900.

Claimant's reliance on the Department's representations and instructions was reasonable and constituted a circumstance beyond claimant's reasonable control that prevented timely filing of the application for review. These circumstances continued through April and May 2021 because, after not receiving benefits, claimant made efforts to contact the Department for more information beginning in mid-April 2021 but did not succeed until May 26, 2021 and the Department did not inform claimant that they needed to file a late application for review until June 2, 2021. Upon being informed that to pursue the matter further, they needed to file a late application for review, the circumstances beyond claimant's reasonable control—the Department's misinformation and claimant's reasonable reliance on it—ceased to exist. Claimant filed their application for review the next day, June 3, 2021, which is within the required 7-day "reasonable time" period. Thus, claimant had good cause to extend the filing period because of circumstances beyond their reasonable control and filed their application for review within a reasonable time, and their late application for review is therefore allowed.

**Dismissal of Hearing.** ORS 657.270(7)(a)(A) provides, in pertinent part, that "[t]he administrative law judge may dismiss a request for hearing" if "[t]he request for hearing is withdrawn by the requesting party."

Order No. 21-UI-162900 concluded that claimant "withdrew the request for hearing" and dismissed claimant's request for hearing on that basis. Order No. 21-UI-162900 at 1. The record does not support the conclusion of the order under review.

Although ORS 657.270(7)(a)(A) authorizes an ALJ to dismiss a hearing request where the requesting party requests to withdraw, principles of due process require that a party's withdrawal request be knowing and voluntary, meaning that the request must not be the result of a reasonable mistaken belief arising from misinformation provided by a Department representative. Here, the Department representative who took claimant's proof of earnings instructed claimant to withdraw claimant's hearing request and made statements such as "I'll get your paystubs in the right place to get you paid for those weeks." EAB Exhibit 1 at 6. These are sufficient to give rise to claimant's reasonable but mistaken belief that they did not need to proceed with the hearing on decision # 92714 to receive benefits, and that they should withdraw their hearing request as instructed by the representative. Because claimant's request to withdraw was the result of a reasonable mistaken belief caused by a Department representative and therefore was not a knowing and voluntary withdrawal, the hearing request was not "withdrawn" consistent with due process principles and as a result the dismissal of claimant's hearing request must be reversed.

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 that the record developed at the hearing shows a full and fair inquiry 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 was discharged for misconduct, Order No. 21-UI-162900 is reversed, and this matter is remanded.

**DECISION:** Claimant's late application for review of Order No. 21-UI-162900 is allowed. Order No. 21-UI-162900 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service: July 7, 2021**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-162900 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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