

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0602**

*Late Application for Review Allowed*  
*Late Request for Hearing Dismissed*

**PROCEDURAL HISTORY:** On March 30, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was overpaid \$80 in regular unemployment insurance benefits and \$600 in Federal Pandemic Unemployment Compensation (FPUC) benefits that they must repay the Department (decision # 161858). On April 19, 2021, decision # 161858 became final without claimant having filed a request for hearing. On May 14, 2021, claimant filed a late request for hearing. ALJ Kangas reviewed claimant's request, and on May 26, 2021 issued Order No. 21-UI-167512, dismissing the 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 June 9, 2021. On June 15, 2021, Order No. 21-UI-167512 became final without claimant having filed a response to the appellant questionnaire or an application for review with the Employment Appeals Board (EAB). On July 2, 2021, claimant filed a late response to the appellant questionnaire and a late application for review of Order No. 21-UI-167512 with EAB. On July 20, 2021, ALJ Kangas mailed a letter to claimant stating that because claimant's response to the appellant questionnaire was late, it would not be considered, another order would not be issued, and Order No. 21-UI-167512 remained in effect. This matter comes before EAB based upon claimant's July 2, 2021 application for review of Order No. 21-UI-167512.

**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.

**FINDINGS OF FACT:** (1) On March 30, 2021, the Department mailed decision # 161858 to claimant's address on file with the Department. Decision # 161858 stated, "IF YOU DO NOT AGREE WITH THIS DECISION SEE THE ENCLOSED INFORMATION FOR YOUR APPEAL RIGHTS." Exhibit 1 at 2 (capitalization in original). The administrative decision further stated, "Any appeal from

this decision must be filed on or before Apr 19, 2021 to be timely.” Exhibit 1 at 2. Decision # 161858 also provided a P.O. box address, a telephone number, and a fax number for use in contacting the Department. Exhibit 1 at 1.

(2) Claimant received decision # 161858 at some point after it was mailed.

(3) On May 14, 2021, claimant filed a request for hearing on decision # 161858. Exhibit 2 at 2.

**CONCLUSIONS AND REASONS:** Claimant’s late application for review of Order No. 21-UI-167512 is allowed. Claimant’s late request for hearing on decision # 161858 is dismissed.

**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 application for review of Order No. 21-UI-167512 was due by June 15, 2021. Because claimant did not file their application for review until July 2, 2021, the application for review was late. Claimant provided a written statement with the application for review. In it, claimant explained that they received Order No. 21-UI-167512 “30 days after it was post-marked.” EAB Exhibit 1 at 2. Claimant further explained that Order No. 21-UI-167512 “was left at my doorstep Monday, June 28. I assume that a neighbor received it accidentally.” EAB Exhibit 1 at 2.

Claimant’s evidence is sufficient to show that claimant failed to file a timely application for review because they did not receive Order No. 21-UI-167512 in the mail, which was a circumstance beyond their reasonable control. Because claimant filed their application for review on July 2, 2021, which was within seven days of the June 28, 2021 date that claimant received Order No. 21-UI-167512, claimant’s evidence also is sufficient to show that claimant filed their application for review within a reasonable time after the circumstances that prevented a timely filing ceased to exist. Claimant therefore established good cause to extend the filing deadline to July 2, 2021, and the late application for review is allowed.

**Late Request for Hearing.** 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.

On March 30, 2021, the Department mailed decision # 161858 to claimant at claimant’s address of record on file with the Department. The 20-day deadline for claimant to file a timely request for hearing

on that decision was April 19, 2021. Claimant did not file a request for hearing on decision # 161858 until May 14, 2021. Accordingly, claimant's request for hearing was late.

In their appellant questionnaire response, claimant stated they did not request a hearing before the April 19, 2021 deadline because claimant "tried calling to ask why I received the overpayment notice when I never received funds." EAB Exhibit 1 at 2. Claimant further stated that because of "the business demands of my employer, making time for phone calls were challenging." EAB Exhibit 1 at 2. Claimant explained that they filed their request for hearing on May 14, 2021 because, "once I made it through to OED I explained myself . . . yet the claim is still being adjudicated." EAB Exhibit 1 at 2.

Claimant did not establish that factors beyond their reasonable control prevented them from filing a timely hearing request. The exact date on which claimant received the administrative decision is unknown. However, claimant did not dispute receiving the decision or otherwise rebut the presumption that it was received in the regular course of the mail. OAR 137-003-0520(10) (January 31, 2012) ("Documents sent through the U.S. Postal Service by regular mail are presumed to have been received by the addressee, subject to evidence to the contrary."); *see also* ORS 40.135(1)(q). Decision # 161858 advised claimant to review the enclosed appeal rights information if they did not believe the decision was correct, and stated that April 19, 2021 was the deadline for filing a timely appeal. The record shows that rather than file a timely request for hearing, decided to appeal decision # 161858 on May 14, 2021 only after contacting a Department representative by telephone and explaining their position. Claimant did not establish that this set of circumstances constituted circumstances beyond their reasonable control that prevented them from filing their hearing request by the April 19, 2021 deadline. Viewed objectively, it was within claimant's reasonable control to carefully read decision # 161858 and, if they disagreed with it, request a hearing by the deadline that was stated therein.

To the extent that claimant's failure to file a timely hearing request was the result of a mistake on claimant's part, claimant did not show that the mistake was an "excusable mistake" within the meaning of the administrative rules. The record does not, for example, raise a due process issue, and fails to show that any mistake was 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 their reasonable control or an excusable mistake prevented them from filing a hearing request on decision # 161858 by the April 19, 2021 deadline, claimant failed to establish good cause to extend the filing deadline beyond that date. Accordingly, claimant's late request for hearing is dismissed.

**DECISION:** Order No. 21-UI-167512 is affirmed.

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

**DATE of Service:** August 5, 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.

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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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