

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0659**

*Reversed*  
*Late Request for Hearing Allowed*  
*Merits Hearing Required*

**PROCEDURAL HISTORY:** On September 10, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not eligible for Pandemic Emergency Unemployment Compensation (PEUC) benefits from April 26, 2020 through July 25, 2020 (decision # 95438). On September 30, 2020, decision # 95438 became final without claimant having filed a timely request for hearing. On May 27, 2021, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on June 18, 2021 issued Order No. 21-UI-169008, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by July 2, 2021. On July 2, 2021, claimant filed a timely response to the appellant questionnaire, and on July 8, 2021 the Office of Administrative Hearings (OAH) mailed a letter to the parties stating that Order No. 21-UI-169008 was vacated and that a hearing would be scheduled to determine whether claimant's late request for hearing would be allowed and, if so, the merits of decision # 95438. On July 26, 2021, ALJ Frank conducted the hearing, and on July 29, 2021 issued Order No. 21-UI-171394, re-dismissing claimant's request for hearing as late without a showing of good cause, leaving decision # 95438 undisturbed. On August 11, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) On September 10, 2020, the Department mailed decision # 95438 to claimant's address on file with the Department. The decision stated, "Any appeal from this decision must be filed on or before September 30, 2020 to be timely." Exhibit 1 at 2. Claimant did not receive decision # 95438 in his mail.

(2) On January 29, 2021, the Department issued a separate overpayment decision based in part on decision # 95438 to claimant's address on file with the Department. Claimant received the January 29, 2021 decision in late February 2021 and noted that it referenced a prior decision mailed by the Department in September 2020, and that the decision referenced was already "final" upon his receipt of the January 29, 2021 decision because the date provided by the Department for appealing had already passed. Exhibit 3 at 4. In March 2021, claimant received an overpayment billing statement reflecting a balance of \$15,624 due on March 18, 2021.

(3) Upon receipt of the overpayment decision and the billing statement, claimant engaged in “many attempts to call” the Department to “understand what was going on,” but was unable to reach a live person and was frequently disconnected while waiting on hold. Exhibit 3 at 1.

(4) On or about April 13, 2021, claimant posted a request on the Department’s “Contact Us” webpage asking for someone from the Department to contact him regarding the January 29, 2021 overpayment decision. Claimant continued to try to contact the Department by telephone after posting his request on the Department’s website.

(5) On May 4, 2021, the Department contacted claimant and advised him that he was not eligible for PEUC benefits due to his eligibility for benefits in California. Claimant was directed “to call California” to pursue a claim for benefits there. Audio Record at 11:54. Claimant felt “lost” by this information and asked the Department representative to provide him a copy of the administrative decision denying him PEUC benefits (decision # 95438). Exhibit 3 at 2. The Department mailed claimant a copy of decision # 95438.

(6) Claimant received decision # 95438, and on May 27, 2021 filed a late request for hearing on decision # 95438.

**CONCLUSIONS AND REASONS:** Order No. 21-UI-171394 is reversed and this matter remanded for a hearing on the merits of decision # 95438.

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.

Claimant’s request for hearing on decision # 95438 was due by September 30, 2020. Because he did not file his request for hearing until May 27, 2021, the request was late. Order No. 21-UI-171394 reasoned that because claimant testified that he had not received decision # 95438 during the 20-day appellate period in September 2020, this was a circumstance beyond claimant’s reasonable control. Order No. 21-UI-171394 at 3. However, Order No. 21-UI-171394 found that claimant’s lack of notice of decision # 95438 ceased to exist in March 2021 when claimant received the overpayment billing statement. Order No. 21-UI-171394 at 3. Because claimant did not file his late request for hearing until May 27, 2021, and because this filing date was more than seven days after March 2021, Order No. 21-UI-171394 concluded that claimant had failed to file his late request for hearing within a reasonable time.

However, the record does support Order No. 21-UI-171394’s conclusion that claimant failed to file his late request for hearing within a reasonable time after the circumstance that had prevented his timely filing ceased to exist. The record shows that upon receipt of the January 29, 2021 overpayment decision and March 2021 overpayment billing statement, claimant acted as a reasonable person would by immediately attempting to contact the Department through multiple unsuccessful telephone calls, and using the Department’s “Contact Us” feature on its website. The Department did not respond until May

4, 2021, and at that time, did not advise claimant how to pursue a late request for hearing. Rather, they restated that claimant was ineligible for PEUC benefits and advised him to contact California, which confused claimant and prompted him to request a copy of decision # 95438 so that he could understand the “specifics” of what decision # 95438 actually said. Exhibit 3 at 2.

Under the circumstances, claimant’s request for a copy of decision # 95438 so that he could understand the “specifics” of that decision was reasonable. Likewise, claimant’s seven-day reasonable time period for filing a late request for hearing under OAR 471-040-0010 did not begin until claimant received the copy of decision # 95438 he requested on May 4, 2021. Although the record fails to show the date claimant received that copy of decision # 95438, it can be inferred from claimant’s persistence in resolving the matter that resulted in the overpayment that claimant filed his late request for hearing within seven days after the date that he received decision # 95438. In light of those circumstances, the preponderance of the evidence supports the conclusion that claimant filed his request for hearing within a reasonable time under OAR 471-040-0010.

The record shows that claimant had good cause for failing to file a timely request for hearing and that he filed his late request for hearing within a reasonable time. Claimant’s late request for hearing on decision # 95438 therefore is allowed, and he is entitled to a hearing on the merits of that decision.

**DECISION:** Order No. 21-UI-171394 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: September 9, 2021**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-171394 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

**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.