

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0704**

*Reversed & Remanded*

**PROCEDURAL HISTORY AND FINDINGS OF FACT:** On August 22, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant willfully made misrepresentations and failed to report material facts to obtain unemployment insurance benefits, and assessing a \$1,193 overpayment, a \$298.25 monetary penalty, and an 8-week disqualification from future benefits (decision # 193651). On September 11, 2019, decision # 193651 became final without claimant having filed a request for hearing. On April 19, 2021 claimant filed a late request for hearing. On May 13, 2021, ALJ Kangas issued Order No. 21-UI-166675, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by May 27, 2021. On May 16, 2021, claimant filed a timely response to the appellant questionnaire. ALJ S. Lee considered claimant's response, and on August 13, 2021, issued Order No. 21-UI-172554, re-dismissing claimant's late request for hearing, and leaving decision # 193651 undisturbed. On August 26, 2021, claimant filed an application for review of Order No. 21-UI-172554 with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant did not declare that they provided a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained information that was not part of the record, and did not show that factors or circumstances beyond claimant's reasonable control prevented them from offering the information into the record as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into the record when reaching this decision. *See* ORS 657.275(2).

The parties may offer new information, such as the information contained in claimant's written argument, into evidence at the remand hearing. At that time, it will be determined if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing regarding documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties in advance of the hearing at their addresses as shown on the certificate of mailing for the notice of hearing.

**EVIDENTIARY MATTER:** EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1). The additional evidence consists of a Department record entry concerning the Department's difficulty in obtaining a valid mailing address for claimant on August 21, 2019. The document has been marked as EAB Exhibit 1, and copies provided to the parties with this decision. Any party that objects to our admitting 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.

**CONCLUSIONS AND REASONS:** Order No. 21-UI-172554 is set aside and this matter remanded for a hearing on whether claimant's late request for hearing on decision # 193651 should be allowed and, if so, the merits of that decision.

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. A letter duly directed and mailed is presumed to have been received in the regular course of the mail. ORS 40.135(1)(q).

Claimant's request for hearing on decision # 193651 was due by September 11, 2019. Because claimant did not file their request for hearing until April 19, 2021, the request was late. However, the record under review indicates that claimant may have had good cause to file their request for hearing late because they may not have received notice of decision # 193651 until after they had contact with the Department on April 19, 2021. Claimant explained in their appellant questionnaire response that on March 8, 2021, they received a letter advising them that they were being denied benefits "because of administrative decision" and if they "had any questions to call." Exhibit 3. Claimant then explained that they tried to call the Department "but the phone [was] busy" after which they "sent emails." Exhibit 3. When asked in the questionnaire why they did not file their hearing request before the deadline stated in the administrative decision, claimant explained, "I never received a letter until right now." Exhibit 3. Department records indicate that the Department concluded on August 21, 2019 that the Department was "unable to detect [claimant's] current mailing address," and that the "dec[ision] might be returned [as] undeliverable." EAB Exhibit 1. In light of the presumption that a letter duly directed and mailed was received in the regular course of the mail, the record on remand must be developed to determine when claimant received notice of decision # 193651 and whether claimant's failure to receive notice of decision # 193651 after the Department mailed it on August 21, 2019 was due to factors beyond claimant's reasonable control. For example, the record fails to show where claimant resided in August and September of 2019 or if claimant was experiencing problems with their mail at that time.

In addition, the record must be developed to determine whether claimant's late hearing request was filed within a reasonable time, that is, within seven days after the circumstances that prevented a timely filing ceased to exist. To do so, it is necessary to develop the record to show when claimant first became aware that the Department had issued a decision assessing an overpayment and penalty disqualification weeks that resulted in a later denial of benefits claimed. The record does not show whether claimant knew or reasonably should have known from the March 8, 2021 letter they received, or at some time thereafter,

that decision # 193651 existed, or what claimant reasonably should have done at that time to determine why they had been denied benefits. For example, the record does not show if claimant's apparently futile attempts to contact the Department by telephone were motivated by their desire to determine why they had been denied benefits. Moreover, the record does not show if claimant's late request for hearing occurred within seven days of when claimant knew about decision # 193651, or if the Department representative that processed claimant's April 19, 2021 email as a request for hearing may only have assumed that it was a request for hearing regarding decision # 193651.

Because further development of the record is necessary for a determination of whether claimant's late request for hearing should be allowed, this matter is remanded for a hearing and order. If the ALJ concludes that claimant filed a request for hearing that should be allowed, the ALJ must then develop a record on the merits of decision # 193651.

**DECISION:** Order No. 21-UI-172554 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 16, 2021**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-172554 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 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 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**  
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