

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0764**

*Reversed*  
*Request to Reopen Allowed*  
*Merits Hearing Required*

**PROCEDURAL HISTORY:** On July 23, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was denied unemployment insurance benefits from June 14, 2020 through September 9, 2020, during the break between her school employer's academic years, because claimant's wages and hours with other employers were insufficient to entitle claimant to benefits during the break (decision # 123359). Claimant filed a timely request for hearing. On September 23, 2020, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for October 5, 2020 at 8:15 a.m. On October 5, 2020, claimant failed to appear for the hearing, and on October 7, 2020 ALJ S. Lee issued Order No. 20-UI-154952, dismissing claimant's request for hearing for failing to appear. On October 27, 2020, Order No. 20-UI-154952 became final without claimant having filed a request to reopen the October 5, 2020 hearing, or an application for review of Order No. 20-UI-154952 with the Employment Appeals Board (EAB).

On April 8, 2021, claimant filed a late request to reopen the October 5, 2020 hearing. On August 3, 2021, OAH mailed notice of a hearing scheduled for September 8, 2021 to consider claimant's late request to reopen the October 5, 2020 hearing and, if granted, the merits of decision # 123359. On September 8, 2021, ALJ Frank conducted a hearing, and on September 16, 2021 issued Order No. 21-UI-174946 dismissing claimant's request to reopen the October 5, 2020 hearing, and leaving Order No. 20-UI-154952 undisturbed. On September 22, 2021, ALJ Frank issued Amended Order No. 21-UI-175376,<sup>1</sup> dismissing claimant's request to reopen the October 5, 2020 hearing, and leaving Order No. 20-UI-154952 undisturbed. On September 24, 2021, claimant filed an application for review of Order No. 21-UI-175376 with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) In early 2020, claimant purchased a new cellular telephone. First occurring in June 2020, claimant had problems with the telephone that required repair on three occasions. The last

<sup>1</sup> Amended Order No. 21-UI-175376 does not state what it amended in the prior order, Order No. 21-UI-174946. There is no apparent difference between the orders, other than the respective dates of the orders and deadlines to appeal.

time claimant took the telephone for repair, the repairperson assured claimant that the telephone would “be fine.” Audio Record at 17:54.

(2) Claimant received the notice of a hearing scheduled for October 5, 2020 before the hearing. Claimant planned to use her cellular phone to participate in the hearing. Without warning, on October 5, 2020, claimant’s telephone did not function. Claimant did not have another functioning telephone that she could use. Her husband had a cellular telephone, but was at work and not available at the time of the hearing. Claimant’s mother had a landline in her room in claimant’s home, but no one had used it for some time. Claimant checked the landline at the time of the hearing, and the battery was “dead.” Audio Record at 29:42. Claimant only used her cellular telephone and never used the landline. Claimant’s husband did not return from work until the evening with his telephone.

(3) On October 6, 2020, claimant tried to call OAH, but was unable to speak with anyone there, and left a message. OAH did not return claimant’s message. Claimant went to the Department’s main office in Salem, Oregon and spoke to a Department employee outside the office. Claimant explained that she had missed her hearing because her telephone did not work, and the Department representative told claimant that she had to wait until she received “something in the mail” from OAH. Audio Record at 24:39.

(4) During October 2020, claimant experienced difficulties receiving her mail.

(5) Claimant knew that some benefits-related processes took a long time due to COVID-19 and believed she may have to wait a long time for information from OAH or the Department regarding her claim. Claimant also thought that the Department or OAH might make a decision regarding her claim based on information she submitted before the October 5, 2020 hearing.

(6) On April 2, 2021, claimant spoke with a Department representative who told claimant that she had missed the deadline to request to reopen or appeal the October 7, 2020 order dismissing claimant’s request for hearing for failing to appear, Order No. 20-UI-154952. The representative advised claimant to contact OAH.

(7) On April 8, 2021, claimant requested to reopen the October 5, 2020 hearing.

**CONCLUSIONS AND REASONS:** Claimant’s request to reopen the October 5, 2020 hearing is allowed, and a hearing on the merits of decision # 123359 is required.

ORS 657.270(5) provides that any party who failed to appear at a hearing may request to reopen the hearing, and the request will be allowed if it was filed within 20 days of the date the hearing decision was issued and shows good cause for failing to appear. The period within which a party may request reopening may be extended if the party requesting reopening has good cause for failing to request reopening within the time allowed, and acts within a reasonable time. OAR 471-040-0041(1) (February 10, 2012). “Good cause” exists when an action, delay, or failure to act arises from an excusable mistake or from factors beyond an applicant’s reasonable control. OAR 471-040-0041(2). OAR 471-040-0041(2)(a)(B) provides that “good cause includes . . . [f]or telephone hearings, unanticipated, and not reasonably foreseeable, loss of telephone service.” “A reasonable time,” is seven days after the circumstances that prevented a timely filing ceased to exist. OAR 471-040-0041(3). The party requesting reopening shall set forth the reason(s) for filing a late request to reopen in a written statement,

which OAH shall consider in determining whether good cause exists for the late filing, and whether the party acted within a reasonable time. OAR 471-040-0041(4).

The order under review dismissed claimant's request to reopen the October 5, 2020 hearing, concluding that claimant did not show good cause to reopen the hearing, and that even assuming that claimant's failure to receive the October 7, 2020 hearing order was a factor beyond claimant's reasonable control, claimant did not act within a reasonable time to request to reopen the hearing. Order No. 21-UI-175376 at 3-4. The order reasoned that waiting until April 2021 to contact the Department regarding the missed hearing "defies comprehension," and that claimant did not request the hearing within a reasonable time. Order No. 21-UI-175376 at 3. The order's conclusion is not supported by the record or law.

The preponderance of the evidence in the record shows claimant had good cause to reopen the hearing. Claimant planned to use her cellular telephone to participate in the October 5, 2020 hearing. Despite having had problems with the telephone in the past, it was not reasonably foreseeable that claimant would have problems with the telephone on the date of the hearing because she had it repaired three times, and after the final repair, the repairperson assured claimant that the telephone would "be fine." Claimant did not have another telephone to use to participate in the hearing. Claimant's unanticipated and reasonably unforeseeable loss of telephone usage on October 5, 2020 was good cause for claimant's failure to appear at the October 5, 2020 hearing.

The deadline for claimant to file a timely request to reopen was October 27, 2020. Because claimant did not file her request to reopen until April 8, 2021, the request to reopen was late. However, claimant had good cause to extend the period within which to file the request to reopen because her delayed request resulted from a factor beyond her reasonable control. Claimant did not become aware of Order No. 20-UI-154952, containing how to appeal and the deadline to do so, until April 2, 2021. This was a factor beyond claimant's reasonable control due to problems with receiving her mail. Claimant received information about Order No. 20-UI-154952 on April 2, 2021, and filed a request to reopen within a reasonable time thereafter, within seven days or less, on April 8, 2021.

The record shows that claimant had good cause to file a request to reopen, and good cause to file her request to reopen late, and that she filed that late request within a reasonable time. Claimant is entitled to a hearing on the merits of decision # 123359.

**DECISION:** Order No. 21-UI-175376 is set aside, as outlined above.

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

**DATE of Service: October 26, 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**  
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