

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0776**

*Late Application for Review Dismissed*

**PROCEDURAL HISTORY:** On July 23, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing a \$6,658.00 overpayment that claimant was required to repay to the Department, a \$998.70 monetary penalty, and a 52-week penalty disqualification from future benefits (decision #194848). On August 12, 2014, decision # 194848 became final without claimant having filed a request for hearing. On July 22, 2021, claimant filed a late request for hearing on decision # 194848. ALJ Kangas considered claimant's request, and on August 11, 2021 issued Order No. 21-UI-172335, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by August 25, 2021. On August 31, 2021, Order No 21-UI-172335 became final without claimant having filed an application for review or a response to the appellant questionnaire. On September 1, 2021, claimant filed a late response to the appellant questionnaire. On September 21, 2021, ALJ Kangas mailed a letter stating that the Office of Administrative Hearings (OAH) would not consider claimant's questionnaire response or issue another order regarding this matter because the questionnaire response was late. On September 24, 2021, claimant filed a late application for review of Order No 21-UI-172335 with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) On July 22, 2014, the Department served notice of an administrative decision concluding that claimant quit work without good cause and was disqualified from receiving unemployment insurance benefits (decision # 94344).<sup>1</sup> On July 23, 2014, the Department mailed decision # 194848, based in part on decision # 94344, to claimant at an invalid mailing address. Exhibit 1 at 1. On June 17, 2016, the Department mailed decision # 194743, vacating and replacing decision # 194848, to claimant at their address of record.<sup>2</sup>

<sup>1</sup> EAB has taken notice of these facts, which are contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). Any party that objects to our taking notice of this information 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 noticed fact will remain in the record.

<sup>2</sup> EAB has taken notice of these facts, which are contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). Any party that objects to our taking notice of this information must submit such objection to this office in writing,

(2) On September 17, 2020, claimant filed late requests for hearing on decisions # 94344 and 194743.<sup>3</sup>

(3) On June 24, 2021, the Oregon Department of Revenue, acting as debt collector for the Department, issued a copy of decision # 194848 to claimant. Exhibit 2 at 3. On July 1, 2021, claimant again filed late requests for hearing on decisions # 94344 and 194743. OAH subsequently scheduled hearings to determine whether claimant had good cause to file late requests for hearing on decisions # 94344 and 194743 and, if so, the merits of those decisions.<sup>4</sup>

(4) On July 22, 2021, claimant filed a late request for hearing on decision # 194848. On August 11, 2021, ALJ Kangas issued Order No. 21-UI-172335, dismissing claimant's late request for hearing on decision # 194848. Order No. 21-UI-172335 stated, "You may appeal this decision by filing the attached form Application for Review with the Employment Appeals Board within 20 days of the date that this decision is mailed." Order No. 21-UI-172335 at 2. Order No. 21-UI-172335 also stated on its Certificate of Mailing, "Any party may appeal this Order by filing a Request for Review with the Employment Appeals Board no later than August 31, 2021." On September 24, 2021, claimant filed an application for review of Order No. 21-UI-172335 with EAB.

**CONCLUSIONS AND REASONS:** Claimant's late application for review of Order No. 21-UI-172335 is dismissed.

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-172335 was due by August 31, 2021. Because claimant did not file their application for review until September 24, 2021,<sup>5</sup> the application for review was late.

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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 noticed fact will remain in the record.

<sup>3</sup> EAB has taken notice of these facts, which are contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). Any party that objects to our taking notice of this information 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 noticed fact will remain in the record.

<sup>4</sup> EAB has taken notice of these facts, which are contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). Any party that objects to our taking notice of this information 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 noticed fact will remain in the record.

<sup>5</sup> The record shows that claimant also enclosed a signed, undated application for review form with their appellant questionnaire response filed September 1, 2021. Even if this form constituted a valid application for review of Order No. 21-

Claimant's written statement included with their late application for review and their statements in their late response to the appellant questionnaire suggest that they may have filed the application for review late due to circumstances beyond their reasonable control. However, EAB need not reach whether claimant had good cause to file the late application for review of Order No. 21-UI-172335 because the matter is moot. Order No. 21-UI-172335 dismissed claimant's late request for hearing on decision # 194848, but that administrative decision had already been vacated, and as a result, Order No. 21-UI-172335 had no effect on claimant's rights or obligations. Further, because claimant's request for hearing on decision # 194743 (which vacated and replaced decision # 194848) is currently pending before OAH, claimant has an opportunity to explain why they filed a late request for hearing on the operative decision that assessed an overpayment and penalties against them.

Accordingly, because decision # 194848 was vacated and replaced by decision # 194743, this matter is moot, and claimant's late application for review is dismissed.

**DECISION:** The application for review filed September 24, 2021 is dismissed. Order No. 21-UI-172335 remains undisturbed.

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](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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UI-172335, it was still not filed by the August 31, 2021 filing deadline, and EAB need not reach whether claimant had good cause to file it late for the same reasons that relate to claimant's September 24, 2021 late application for review.



# 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 ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄໍາຕັດສິນນີ້.

**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  
[www.Oregon.gov/Employ/eab](http://www.Oregon.gov/Employ/eab)

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