

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

*Objections Overruled*  
*2021-EAB-0776 Adhered to on Reconsideration*

**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). On October 26, 2021, EAB issued EAB Decision 2021-EAB-0776, dismissing claimant's late request for hearing because the matter was moot. On November 2, 2021, claimant filed a written objection to EAB's evidentiary ruling in EAB Decision 2021-EAB-0776. Effective November 2, 2021, EAB reconsidered EAB Decision 2021-EAB-0776 on its own motion in order to address claimant's objection.

This decision is issued pursuant to EAB's authority under ORS 657.290(3).

**EVIDENTIARY MATTER:** Under OAR 471-041-0090(1) (May 13, 2019), EAB considered additional evidence when reaching EAB Decision 2021-EAB-0776. The additional evidence consisted of information contained within Employment Department records, which EAB took notice of pursuant to its authority under OAR 471-041-0090(1)(c). For the parties' ease of reference, the information has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision.

**CLAIMANT’S OBJECTIONS:** In EAB Decision 2021-EAB-0776, EAB took notice of information from Employment Department records, now marked as EAB Exhibit 1, admitted it into evidence, and notified the parties that they had the right to object in writing to EAB’s admission of the information within 10 days. On November 2, 2021, claimant submitted timely written objections to EAB’s admission of the information. Claimant’s objections are as follows:

1. Claimant was denied due process because the administrative decisions at issue did not afford claimant a meaningful opportunity to address the issues involved, and claimant has never been provided with information on decision # 194743.

Claimant’s objection is overruled. EAB did not rule on the merits of any underlying administrative decision. EAB admitted the information in the Department’s records to show first that claimant’s request for hearing on decision # 194848 was moot because that decision had been vacated and therefore had no effect on claimant’s rights or obligations, and second, that claimant had already sought to appeal decision # 194743, which replaced the vacated decision # 194848. Although claimant’s objection relating to their assertion that they have never been provided with information on decision # 194743 is overruled, a copy of decision # 194743 is included with EAB Exhibit 1, enclosed with this decision.

2. The Department has not explained why claimant’s first and middle names were transposed.

Claimant’s objection is overruled. Although the Department’s mistake regarding claimant’s name is unfortunate, it is not relevant to the question of whether EAB properly admitted the noticed facts.

3. The Department has failed to account for mail delay and the “prison mailbox rule.”

Claimant’s objection is overruled. As EAB acknowledged in EAB Decision 2021-EAB-0776, claimant’s statement enclosed with their application for review of Order No. 21-UI-172335 suggested that they may have filed the application for review late due to factors beyond their control—such as a delay in mail routing at the correctional facility where claimant had been incarcerated. Even if the record did show that claimant had filed the application for review late due to factors beyond their control, however, the record would have required the same result in EAB Decision 2021-EAB-0776 because the administrative decision underlying EAB’s decision had been vacated, meaning it was no longer in effect, and therefore had no effect on claimant’s rights or obligations.

4. The noticed facts are legal conclusions.

Claimant’s objection is overruled. Some of the evidence included in EAB Exhibit 1 contains legal conclusions regarding claimant’s eligibility for unemployment insurance benefits. However, EAB Decision 2021-EAB-0776 cited that evidence merely for the propositions that certain procedural events, such as the Department’s issuance of administrative decisions, or claimant’s responses to those decisions, occurred. EAB did not rely on any prior legal conclusions contained within any of the evidence included in EAB Exhibit 1 when reaching the

conclusion in EAB Decision 2021-EAB-0776.

5. EAB failed to consider additional evidence provided by claimant.

Claimant's objection is overruled. As discussed above, the conclusion in EAB Decision 2021-EAB-0776 is based entirely on the fact that decision # 194848—the administrative decision for which claimant filed a late request for hearing that was dismissed by Order No. 21-UI-172335—was vacated, was no longer in effect, and therefore had no effect on claimant's rights or obligations. Claimant offered no evidence to disprove this fact or to show why their late application for review should be considered in light of the fact that the underlying administrative decision had been vacated.

**DECISION:** On reconsideration, claimant's objections are overruled, EAB Decision 2021-EAB-0776 is adhered to, and Order No. 21-UI-172335 remains undisturbed.

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

**DATE of Service: December 8, 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**

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**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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