

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0837**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On May 19, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving unemployment insurance benefits effective October 18, 2020 (decision # 74952). Claimant filed a timely request for hearing. On June 17, 2021, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for June 30, 2021 at 8:15 a.m. On June 30, 2021, claimant failed to appear at the hearing, and ALJ S. Lee issued Order No. 21-UI-169602, dismissing the hearing request due to claimant's failure to appear. On July 7, 2021, claimant filed a timely request to reopen the June 30, 2021 hearing. ALJ S. Lee considered claimant's request, and on September 28, 2021 issued Order No. 21-UI-175697, denying the request and leaving Order No. 21-UI-169602 undisturbed. On October 15, 2021, claimant filed an application for review of Order No. 21-UI-175697 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 hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented them from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

However, the parties may offer new information 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.

**FINDING OF FACT:** (1) The Department mailed decision # 74952 to claimant at an address in Metolius, Oregon. OAH mailed the notice for the September 30, 2021 hearing to the same street address and zip code, but in Madras, Oregon.

(2) Claimant missed the June 30, 2021 hearing because they were “not aware of date & time of [their] hearing.” Exhibit 5.

**CONCLUSIONS AND REASONS:** This matter is reversed and remanded for additional proceedings to determine whether claimant’s request to reopen should be allowed, and if allowed, to address the merits of decision # 74952.

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. “Good cause” exists when the requesting party’s failure to appear at the hearing arose from an excusable mistake or from factors beyond the party’s reasonable control. OAR 471-040-0040(2) (February 10, 2012). The party requesting reopening shall set forth the reason(s) for missing the hearing in a written statement, which the Office of Administrative Hearings (OAH) shall consider in determining whether good cause exists for failing to appear at the hearing. OAR 471-040-0040(3). A letter duly directed and mailed was received in the regular course of the mail. ORS 40.135(1)(q). OAR 471-040-0040(2)(a)(A) provides that good cause includes “[f]ailure to receive a document because [OAH] mailed it to an incorrect address despite having the correct address[.]”

Claimant filed a timely request to reopen the June 30, 2021 hearing. Order No. 21-UI-175697 denied claimant’s request by concluding that the request did not show good cause for claimant’s failure to appear at the hearing. Order No. 21-UI-175697 at 2. The order reasoned that claimant did not provide an explanation in their request for why they were not aware of the hearing date and time, and that, because OAH mailed the notice of hearing “to the address [claimant] provided to [OAH]” and was not returned as undeliverable, the legal presumption was that claimant received the notice in the regular course of the mail. Order No. 21-UI-175697 at 2. However, the record under review must be developed further to determine if claimant had good cause to reopen the June 30, 2021 hearing.

In their request to reopen, claimant explained that they were “not aware” of the date and time of the hearing regarding decision # 74952. Exhibit 5. That may mean that claimant did not receive the notice of the June 30, 2021 hearing in the mail. The record shows that OAH mailed the notice of hearing to claimant in Madras, Oregon, although the address of record with the Department is the same address, but in Metolius, Oregon.<sup>1</sup> The record does not show that claimant changed their address with OAH, and claimant used the Metolius address on their request to reopen. Exhibit 5. If the address on the notice of the June 30, 2021 hearing or other problems with claimant’s mail caused claimant not to receive the notice of hearing, this may be sufficient to establish good cause for failing to attend the June 30, 2021 hearing.

However, the record does not provide sufficient detail to determine why claimant was “not aware” of the date and time of the hearing, whether it was because they did not receive the notice of hearing or some other reason. On remand, the record must be developed to clarify why claimant did not know the date

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<sup>1</sup> EAB has taken notice of this fact, which is 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.

and time of the hearing, and to show if claimant's failure to appear was either due to factors beyond their reasonable control, or the result of an excusable mistake on claimant's part. The inquiry should include whether claimant received mail addressed to a Madras, Oregon address, and whether claimant was experiencing problems with receiving their mail during the relevant time period.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because claimant's request to reopen suggests the possibility that they might have good cause to reopen the June 30, 2021 hearing, the record does not support a denial of their reopen request, and additional evidence is required before any determination can be made on that issue. Order No. 21-UI-175697 therefore is reversed, and this matter is remanded.

**DECISION:** Order No. 21-UI-175697 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: November 18, 2021**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-175697 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

**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 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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