

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0960**

*Affirmed*  
*Late Application for Review Allowed*  
*Late Request for Hearing Dismissed*

**PROCEDURAL HISTORY:** On July 2, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision assessing claimant a \$1,200 overpayment in Lost Wage Assistance (LWA) benefits that claimant was required to repay (decision # 0441988). On July 22, 2021, decision # 0441988 became final without claimant having filed a request for hearing. On August 19, 2021, claimant filed a late request for hearing. ALJ Kangas reviewed claimant's request, and on October 7, 2021 issued Order No. 21-UI-176581, dismissing the request as late without a showing of good cause, subject to claimant's right to renew the request by responding to an appellant questionnaire by October 21, 2021. On October 27, 2021, Order No. 21-UI-176581 became final without claimant having filed a response to the appellant questionnaire or an application for review with the Employment Appeals Board (EAB). On November 12, 2021, claimant filed a late application for review of Order No. 21-UI-176581 with EAB.

**FINDINGS OF FACT:** (1) On July 2, 2021, the Department mailed decision # 0441988 to claimant's address on file with the Department. Decision # 0441988 stated, "You have the right to appeal this decision if you believe it is wrong. Your request for appeal must be received no later than July 22, 2021." Exhibit 1 at 1. Decision # 0441988 also provided a P.O. Box address, two telephone numbers, and two fax numbers for use in contacting the Department. Exhibit 1 at 1.

(2) On August 10, 2021, claimant received decision # 0441988 in the mail. Exhibit 2 at 11.

(3) On August 19, 2021, claimant filed a request for hearing on decision # 0441988. Exhibit 2 at 2.

**CONCLUSIONS AND REASONS:** Claimant's late application for review of Order No. 21-UI-176581 is allowed. Claimant's late request for hearing on decision # 0441988 is dismissed.

**Late Application for Review.** 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-176581 was due by October 27, 2021. Because claimant did not file their application for review until November 12, 2021, the application for review was late. Claimant provided a written statement with the application for review. In it, claimant explained that they only received Order No. 21-UI-176581 on November 8, 2021 because they and their son were ill and unable to collect their mail until that date. Claimant’s written statement shows that claimant failed to file a timely application for review because they did not receive Order No. 21-UI-176581 until November 8, 2021 due to the illness of claimant and their son, which was a circumstance beyond claimant’s reasonable control. Because claimant filed their application for review on November 12, 2021, which was within seven days of the November 8, 2021 date that claimant received Order No. 21-UI-176581, claimant filed their application for review within a “reasonable time” after the circumstances that prevented a timely filing ceased to exist. Claimant therefore established good cause to extend the filing deadline to November 12, 2021, and the late application for review is allowed.

**Late Request for Hearing.** 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.

On July 2, 2021, the Department mailed decision # 0441988 to claimant at claimant’s address of record on file with the Department. The 20-day deadline for claimant to file a timely request for hearing on that decision was July 22, 2021. Claimant did not file a request for hearing on decision # 0441988 until August 19, 2021. Accordingly, claimant’s request for hearing was late.

Claimant established good cause to extend the July 22, 2021 deadline to file their request for hearing. This is because the record on review shows that claimant did not receive decision # 0441988 until August 10, 2021, which was a factor beyond claimant’s reasonable control that prevented claimant from filing a request for hearing by the July 22, 2021 deadline. However, upon claimant’s receipt of the administrative decision on August 10, 2021, the factor beyond claimant’s reasonable control ceased to exist. The deadline to file a request for hearing was therefore extended to August 17, 2021, which is the seven-day “reasonable time” from when the factor that prevented a timely filing ceased to exist on August 10, 2021. Claimant filed their request for hearing on August 19, 2021, after the seven-day “reasonable time” period concluded. Accordingly, claimant did not file their late request for hearing within a reasonable time, and claimant’s late request for hearing on decision # 0441988 is subject to dismissal under ORS 657.875 and OAR 471-040-0010.

**DECISION:** Order No. 21-UI-176581 is affirmed.

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

**DATE of Service: December 17, 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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