

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0995**

*Reversed*  
*Request for Hearing Allowed*  
*Merits Hearing Required*

**PROCEDURAL HISTORY:** On May 7, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant filed late claims for unemployment insurance benefits for the weeks including December 13, 2020 through March 20, 2021 (weeks 51-20 through 11-21) and therefore was denied benefits for those weeks (decision # 84248). On May 27, 2021, decision # 84248 became final without claimant having filed a request for hearing. On June 10, 2021, claimant filed a late request for hearing on decision # 84248. ALJ Kangas considered claimant's request, and on July 9, 2021 issued Order No. 21-UI-170059, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by July 23, 2021. On July 13, 2021, claimant filed a timely response to the appellant questionnaire. On September 29, 2021, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 21-UI-170059 was vacated and that a new hearing would be scheduled to determine whether claimant had good cause to file the late request for hearing and, if so, the merits of decision # 84248. On November 12, 2021, ALJ Lucas conducted a hearing, and on November 17, 2021 issued Order No. 21-UI-179904, re-dismissing claimant's request for hearing as late without a showing of good cause, and leaving decision # 84248 undisturbed. On November 24, 2021, claimant filed an application for review of Order No. 21-UI-179904 with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) On May 7, 2021, the Department mailed decision # 84248 to claimant's address on file with the Department. Decision # 84248 stated, "You have the right to appeal this decision if you do not believe it is correct. Your request for appeal must be received no later than May 27, 2021." Exhibit 1 at 3.

(2) On May 13, 2021, claimant received decision # 84248 in the mail. Exhibit 3 at 4. Claimant disagreed with the decision and decided to appeal it.

(3) On May 17, 2021, claimant mailed a letter to the Department in which he stated that he was writing "in regards to [his] unemployment benefits claim being denied for the period of December 13, 2020 through March 20, 2021" and asked the Department to "grant [him] payment for the missing benefits of

12 weeks that [he] was denied for.” Exhibit 6 at 1–2. The letter did not specifically state that claimant wished to appeal the administrative decision or request a hearing on it. On May 24, 2021, claimant mailed an identical copy of the May 17, 2021 letter to the Department. Claimant enclosed a copy of decision # 84248 with each copy of the letter he mailed to the Department. The Department received both of claimant’s letters; however, because of a mail backlog the Department did not open claimant’s letters until July 14, 2021 and July 27, 2021, respectively.

(4) On June 10, 2021, claimant submitted a request for hearing on decision # 84248 via the Department’s online contact form.

**CONCLUSIONS AND REASONS:** Order No. 21-UI-179904 is reversed and this matter remanded for a hearing on the merits of decision # 84248.

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. OAR 471-040-0005(1) (July 15, 2018) provides that a request for hearing may be filed on forms provided by the Employment Department or similar offices in other states. Use of the form is not required, provided the party specifically requests a hearing or otherwise expresses a present intent to appeal and it can be determined what issue or decision is being appealed.

The request for hearing on decision # 84248 was due by May 27, 2021. Therefore, claimant’s June 10, 2021 request for hearing was late. However, the record shows that claimant filed two timely requests for hearing prior to that date.

The order under review concluded that claimant’s letters mailed May 17, 2021 and May 24, 2021 did not constitute requests for hearing because “claimant did not specifically request a hearing or otherwise express a present intent to appeal.” Order No. 21-UI-21-UI-179904 at 4. The record does not support this conclusion. Decision # 84248 denied claimant benefits for the weeks including December 13, 2020 through March 20, 2021. Claimant’s May 17, 2021 (as well as the duplicate letter mailed a week later) specifically referenced that exact period of time, enclosed a copy of the decision # 84248, and requested that the Department pay claimant benefits for those weeks. Irrespective of the fact that claimant did not use the words “appeal” or “hearing” in his letter, it is clear from the letter that claimant disagreed with the outcome of decision # 84248 and wished to protest it. OAR 471-040-0005(1) does not require a party to explicitly *state* that they are appealing an administrative decision; rather, it is sufficient for the party merely to express an intent to do so. As an appeal of the administrative decision was the only remedy available to claimant, it is reasonable to construe his protest of the decision as an expressed intent to appeal. Therefore, claimant’s letters mailed on May 17, 2021 and May 24, 2021 constituted timely requests for hearing on decision # 84248.

For the above reasons, claimant filed a timely request for hearing on decision # 84248. Claimant’s request for hearing is therefore allowed, and claimant is entitled to a hearing on the merits of that decision.

**DECISION:** Order No. 21-UI-179904 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service: December 30, 2021**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-179904 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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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 الإستئناف 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.

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