

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-1039**

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

**PROCEDURAL HISTORY:** On July 1, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving unemployment insurance benefits effective June 7, 2020 (decision # 101417). On July 21, 2021, decision # 101417 became final without claimant having filed a request for hearing. On July 28, 2021, claimant filed a late request for hearing. On October 29, 2021, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for November 12, 2021 to consider whether claimant's late request for hearing should be allowed and, if so, the merits of decision # 101417. On November 12, 2021, ALJ Lucas conducted a hearing at which the employer failed to appear, and on November 17, 2021 issued Order No. 21-UI-179905, dismissing claimant's request for hearing as late without good case and leaving decision # 101417 undisturbed. On December 7, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) On July 1, 2021, the Department mailed decision # 101417 to claimant's address on file with the Department. Decision # 101417 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 July 21, 2021." Exhibit 1 at 2.

(2) On July 6, 2021, claimant received decision # 101417, understood its substance and disagreed with its result. Claimant also understood that decision # 101417 provided him until July 21, 2021 to file a timely request for hearing regarding the decision.

(3) On July 20, 2021, claimant used the "ContactUs" feature on the Department's website in an attempt to make a timely request for hearing. Claimant stated on the form that he disagreed with Decision # 101417 and provided reasons for his disagreement. However, claimant did not expressly request a hearing on Decision # 101417. Claimant also asked on the form, "Is there anything . . . that I need to provide for you?" Transcript at 17. Claimant did not receive any response from the Department to his "ContactUs" form submission.

(4) On July 28, 2021, claimant submitted a second “ContactUs” form to the Department expressly requesting a hearing on Decision # 101417.

**CONCLUSIONS AND REASONS:** Claimant’s late request for hearing on decision # 101417 is allowed. Claimant is entitled to a hearing on the merits of that decision.

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.

Claimant’s request for hearing on decision # 101417 was due by July 21, 2021. Because he did not file his request for hearing until July 28, 2021, the request was late. The order under review concluded that claimant’s July 20, 2021 contact with the Department did not constitute a timely request for hearing because claimant failed to “specifically request a hearing or otherwise express a present intent to appeal” in the July 20, 2021 contact. Order No. 21-UI-179905 at 3. Furthermore, the order under review concluded that claimant did not show good cause for the late request for hearing he filed on July 28, 2021, because per OAR 471-040-0010(1)(b) “good cause does not include . . . [n]ot understanding the implications of a decision or notice when it is received” and claimant’s circumstances did not otherwise amount to an excusable mistake. Order No. 21-UI-179905 at 3. While the order under review correctly concluded that claimant’s July 20, 2021 contact was insufficient in substance to support a timely request for hearing, the record does not support the order under review’s conclusion that claimant’s July 28, 2021 late request for hearing lacked good cause.

The record shows that after claimant received decision # 101417, he intended to timely request a hearing on the decision because he understood its implications and he disagreed with it. To that end, on July 20, 2021, claimant made contact with the Department using a web-based “ContactUs” form and explained in that form his reasons for disagreeing with decision # 101417. Although claimant never expressly requested a hearing in this written communication, an objective reading of his communication reflects that requesting a hearing was his intention in making the July 20, 2021 communication. Furthermore, claimant concluded his communication by asking the Department if he needed to provide any additional information, thereby inviting the Department to engage in a dialogue designed to assist claimant with completing a request for hearing. The Department did not respond. Thus, although claimant did not succeed in expressly requesting a hearing on July 20, 2021, the record shows that he made substantial efforts in trying to do so and was simply unable to follow the instructions for timely requesting a hearing provided in decision # 101417.

Claimant’s inability to follow the instructions for filing a timely request for hearing, despite substantial efforts to comply, constitutes good cause and is qualitatively different than a finding that he did not understand the implications of decision # 101417 as the order under review found. The former scenario is an excusable mistake and constitutes good cause; the latter scenario does not. As such, the record establishes that claimant had good cause to file a late request for hearing because his inability to file a timely request for hearing was the result of an excusable mistake. Furthermore, because the record shows that claimant filed his late request for hearing on July 28, 2021, and because it can be inferred

from the record that this filing was made within seven days of his discovery of the need to expressly state his intention to request a hearing, it follows that claimant's late request for hearing was filed within a reasonable time.

Because claimant has established good cause and filed within a reasonable time, his late request for hearing is allowed, and claimant is entitled to a hearing on the merits of decision # 101417.

**DECISION:** Order No. 21-UI-179905 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service: January 13, 2022**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-179905 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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