

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-1069**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On November 5, 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 June 20, 2021 through July 31, 2021 (weeks 25-21 through 30-21) and was therefore denied benefits for those weeks (decision # 73100). Claimant filed a timely request for hearing. On December 8, 2021, ALJ Frank conducted a hearing, and on December 9, 2021 issued Order No. 21-UI-181495, affirming decision # 73100. On December 13, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** EAB considered claimant's written argument when reaching this decision.

**FINDINGS OF FACT:** (1) Claimant's native language is Vietnamese and claimant's ability to communicate in English is limited.

(2) On March 31, 2020, claimant filed an initial claim for unemployment insurance benefits with a first effective week of March 15, 2020 through March 21, 2020 (week 12-20).

(3) On October 10, 2021, claimant used the Department's online claim system to file a claim for benefits for the weeks including June 20, 2021 through July 24, 2021 (weeks 25-21 through 29-21).

(4) On October 18, 2021, claimant contacted the Department to file a claim for benefits for the week of July 25, 2021 through July 31, 2021 (week 30-21). Although the Department believed that claimant "need[ed] help from family or an interpreter" in her communication, the Department processed her claim for benefits for week 30-21. Audio Record at 10:13 to 10:37.

(5) The Department did not pay claimant for weeks 25-21 through 30-21, the weeks at issue.

**CONCLUSIONS AND REASONS:** Order No. 21-UI-181495 is set aside and this matter remanded for a new hearing with the assistance of a Vietnamese interpreter.

The order under review concluded that pursuant to OAR 471-030-0045(4) (January 11, 2018), claimant's weekly claims for benefits for the weeks 25-21 through 30-21 were untimely because the last of these claims was due on or before August 7, 2021, and claimant did not file any of her weekly claims prior to October 2021, and the rule did not otherwise provide a "good cause" exception. Order No. 21-UI-181495 at 2. The record as developed does not support these conclusions and additional evidence is needed to determine whether claimant is eligible for benefits for the weeks at issue.

Oregon law requires that, "to secure the constitutional rights and other rights of persons who are unable to readily understand or communicate in the English language because of a non-English-speaking cultural background . . . , and who as a result cannot be fully protected in administrative proceedings . . . unless qualified interpreters are available to provide assistance," such persons "shall" be provided with an interpreter. ORS 45.273, ORS 45.275(1)(a); *see also* OAR 471-040-0007 (March 5, 2006). "If, at the time of or during the contested case proceeding, it becomes apparent that an interpreter is necessary for a full and fair inquiry, the administrative law judge shall arrange for an interpreter and may postpone the proceeding if necessary." OAR 471-040-007(7)(a).

The record shows that prior to testifying, claimant announced her intent to have her daughter assist her during the hearing because claimant's English was "not good." Audio Record at 00:49. Claimant's daughter subsequently appeared and was told she could not translate English to Vietnamese on behalf of claimant in lieu of an interpreter. Audio Record at 01:58 to 02:11. When asked whether claimant was capable of participating in a hearing in English, claimant's daughter responded, "[claimant] can do a hearing in English, it's just she is not very strong with it." Audio Record at 01:21. Based on this information, the record shows that the ALJ was inclined to postpone and reschedule the hearing so that a Vietnamese interpreter could be provided. Audio Record at 01:51. However, when claimant's daughter asked claimant if she thought she could proceed with the hearing in English, claimant responded that she could. Audio Record at 02:11 to 02:18. From there, the ALJ agreed to proceed with the hearing, encouraged claimant to ask questions, and noted that if it appeared that claimant's limited English proficiency created a problem, the hearing would be rescheduled so that a Vietnamese interpreter could be provided. Audio Record at 02:30 to 02:50

When a party has limited proficiency in English, the ALJ's obligation to make a full and fair inquiry into the relevant facts includes the obligation to provide the party with an interpreter. Here, the record arguably demonstrates that the need for a Vietnamese interpreter was apparent prior to the taking of any testimony. However, even if it had not, the record shows that this threshold was definitely crossed when the Department's representative testified that the Department's records included an entry indicating that claimant needed the help of an interpreter to communicate. Furthermore, claimant's sworn testimony at hearing, viewed objectively, demonstrated that her limited English proficiency adversely affected her ability to meaningfully participate and therefore deprived her of a full and fair hearing.

On remand, claimant should be provided the assistance of an interpreter so that a full and fair inquiry into whether claimant timely filed her weekly claims can occur. Once provided, additional inquiry is needed that addresses the circumstances surrounding claimant's weekly claims during the weeks at issue, including any attempts by claimant to contact the Department, and the content of any discussions that may have occurred between claimant and the Department. Likewise, because the record suggests that claimant's daughter may have assisted claimant with filing her weekly claims during the weeks at issue and that claimant's daughter's testimony might therefore be relevant, claimant should have the

opportunity to present her daughter's testimony on remand should that testimony, in fact, be relevant and should she choose to do so. Audio Record at 12:45 to 12:55.

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 further development of the record is necessary for a determination of whether claimant filed late claims for benefits during the weeks at issue, Order No. 21-UI-181495 is reversed, and this matter is remanded.

**DECISION:** Order No. 21-UI-181495 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: January 18, 2022**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-181495 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**

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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.

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