

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0071**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On August 6, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant failed to register for work in accordance with the Department's rules and therefore was ineligible to receive unemployment insurance benefits for the week of July 18, 2021 through July 24, 2021 (week 29-21) and until the reason for the denial had ended. On August 26, 2021, the August 6, 2021 administrative decision became final without claimant having filed a request for hearing. On September 14, 2021 claimant filed a late request for hearing on the August 6, 2021 administrative decision. ALJ Kangas considered claimant's request, and on November 18, 2021 issued Order No. 21-UI-180049, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by December 2, 2021. On December 7, 2021, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 21-UI-180049 with the Employment Appeals Board (EAB).

**EVIDENTIARY MATTER:** EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of claimant's response to the appellant questionnaire, and has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 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 exhibit will remain in the record.

**FINDINGS OF FACT:** (1) In late July 2021, claimant stopped claiming benefits on their unemployment insurance claim because they were working 40 hours per week. EAB Exhibit 1 at 2. Claimant's business closed in the first week of August 2021 and they began trying to call the Department for assistance in restarting their claim. EAB Exhibit 1 at 2.

(2) On August 6, 2021, the Department mailed the August 6, 2021 administrative decision to claimant's address on file with the Department. Claimant did not receive the decision. EAB Exhibit 1 at 1.

(3) When claimant “got ahold” of a Department representative “to discuss th[e] matter, it was Sept. and [claimant’s] only option . . . was to Appeal[.]” EAB Exhibit 1 at 2.

(4) On September 14, 2021, claimant made a request for hearing on the August 6, 2021 administrative decision.

**CONCLUSIONS AND REASONS:** Order No. 21-UI-180049 is set aside and the matter remanded to determine whether claimant had good cause to file a late request for hearing on the August 6, 2021 administrative decision and, if they did, 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.

The request for hearing on the August 6, 2021 administrative decision was due by August 26, 2021. Because claimant did not file their request for hearing until September 14, 2021, the request for hearing was late.

Further information is necessary to determine whether claimant had good cause to extend the August 26, 2021 deadline to file their request for hearing. The information in claimant’s response to the appellant questionnaire suggests that claimant’s failure to file their request for hearing by August 26, 2021 arose from a factor beyond claimant’s reasonable control because they failed to receive the August 6, 2021 administrative decision. However, given that claimant began trying to reach the Department in the first week of August 2021, it remains possible that claimant reached a Department representative and learned of the existence of the August 6, 2021 administrative decision prior to the August 26, 2021 deadline to appeal. On remand, the ALJ should make inquiry necessary to establish whether claimant’s failure to receive the August 6, 2021 administrative decision was a factor that prevented them from filing by the deadline; or whether, because of their efforts to call the Department in August 2021, they were aware of the existence of the decision and the deadline to appeal and could have appealed by that date, despite not having received the decision.

To the extent the record on remand shows that claimant had good cause to extend the August 26, 2021 deadline to file their request for hearing, the ALJ should inquire whether the date claimant filed their request for hearing, September 14, 2021, occurred within the seven-day “reasonable time” from when the factor that prevented a timely filing ceased to exist. Specifically, the ALJ should develop the record to determine when in September 2021 claimant learned that his “only option . . . was to Appeal,” and, assuming that event caused the factor beyond claimant’s reasonable control to cease to exist, whether that date was within seven days of September 14, 2021. EAB Exhibit 1 at 2.

Because further development of the record is necessary for a determination of whether claimant’s late request for hearing on the August 6, 2021 administrative decision should be allowed, Order No. 21-UI-180049 is reversed, and this matter is remanded. If the ALJ concludes that claimant had good cause to

file the late request for hearing, the ALJ should conduct a hearing on the merits of the August 6, 2021 administrative decision.

**DECISION:** Order No. 21-UI-180049 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 14, 2022**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-180049 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 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 ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄຳຕັດສິນນີ້.

**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.

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