

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0094**

*Affirmed*  
*Late Request for Hearing Dismissed*

**PROCEDURAL HISTORY:** On April 22, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct, disqualifying claimant from receiving unemployment insurance benefits effective March 28, 2021 (decision # 114620). On May 12, 2021, decision # 114620 became final without claimant having filed a request for hearing. On July 9, 2021, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on July 21, 2021 issued Order No. 21-UI-170860, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by August 4, 2021. On July 28, 2021, claimant filed a timely response to the appellant questionnaire. On December 7, 2021, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 21-UI-170860 was vacated and that a hearing would be scheduled to determine whether claimant's late request for hearing should be allowed and, if so, the merits of decision # 114620. On December 27, 2021, ALJ L. Lee conducted a hearing, and on January 5, 2022 issued Order No. 22-UI-183240, re-dismissing claimant's request for hearing as late without good cause, leaving decision # 114620 undisturbed. On January 12, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) On April 22, 2021, the Department mailed decision # 114620 to claimant's address on file with the Department. Decision # 114620 stated that the "appeal deadline date" was May 12, 2021. Exhibit 1 at 1. Decision # 114620 also stated the following: "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 12, 2021. This decision **DENIES** benefits." Exhibit 1 at 2 (emphasis in original). Decision # 114620 also provided a P.O. Box address, three telephone numbers, and a fax number for use in contacting the Department. Exhibit 1 at 1.

(2) Claimant received decision # 114620 shortly after it was mailed to her, and understood that it denied her benefits. Initially, claimant "didn't think [she] had a right to fight" the denial, and did not notice that decision # 114620 stated there was a deadline to appeal the decision. Transcript at 17.

(3) Claimant claimed benefits each week for the weeks from April 18, 2021 through July 3, 2021. Claimant claimed benefits for the week of April 18, 2021 through April 24, 2021 on April 26, 2021. Claimant claimed benefits for the week of April 25, 2021 through May 1, 2021 on May 3, 2021. Claimant claimed benefits for the week of May 2, 2021 through May 8, 2021 on May 10, 2021. Claimant claimed benefits each week thereafter until July 6, 2021.

(4) During April through at least July 2021, claimant was experiencing hip pain that was later treated with hip replacement surgery. Claimant was also busy taking care of her husband who had cancer.

(5) On July 9, 2021, claimant called the Department and asked about the status of her claim. A Department representative told claimant that her claim had been denied and that she could appeal the denial.

(6) On July 9, 2021, claimant asked a friend to help her with requesting a hearing. Claimant's friend helped her request a hearing for decision # 114620 online that same day.

**CONCLUSIONS AND REASONS:** Claimant's late request for hearing is dismissed.

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 decision # 114620 was due by May 12, 2021. Because claimant did not file her request for hearing until July 9, 2021, the request was late. Claimant failed establish good cause to extend the May 12, 2021 deadline to file her request for hearing on decision # 114620.

Claimant did not establish that a circumstance beyond her reasonable control prevented her from timely filing a hearing request. The record shows that claimant received the decision shortly after it was mailed and that decision # 114620 advised claimant that May 12, 2021 was the deadline for filing a timely appeal. Although claimant was presumably preoccupied and busy due to her health and caring for her husband, the record does not show that her family's medical conditions prevented her from filing a request for hearing by May 12, 2021. After claimant received decision # 114620, she made weekly claims for benefits on April 26, 2021, May 3, 2021, and May 10, 2021, and each week thereafter, including on July 6, 2021. Claimant therefore was able to engage in matters related to her unemployment insurance claim during that time, and the record does not show that medical reasons prevented her from requesting a hearing in the same way as she claimed benefits each week. Decision # 114620 also provided three telephone numbers and a mailing address that claimant could have used to request a hearing. The record fails to show that claimant could not have employed the help of her friend much sooner than July 9, 2021, when she finally did so to request a hearing online.

To the extent that claimant's failure to file a timely request for hearing on decision # 114620 was the result of a mistake on claimant's part, claimant did not show that the mistake was an "excusable mistake" within the meaning of the administrative rules. Although claimant did not initially think she

could “fight” the decision, and did not notice that decision # 114620 stated there was a deadline to appeal the decision, the record does not show that was because of a due process issue, inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply. Accordingly, claimant’s late request for hearing on decision # 114620 is subject to dismissal under ORS 657.875 and OAR 471-040-0010.

**DECISION:** Order No. 22-UI-183240 is affirmed.

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

**DATE of Service:** February 24, 2022

**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](https://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 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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