

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0125-R**

*Request for Reconsideration Allowed*  
*Late Application for Review Allowed*  
*Order No. 21-UI-174776 Reversed*  
*Late Request for Hearing Allowed*  
*Merits Hearing Required*

**PROCEDURAL HISTORY:** On February 11, 2021, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was not entitled to receive PUA benefits effective February 2, 2020. On March 3, 2021, the February 11, 2021 administrative decision became final without claimant having filed a request for hearing. On August 18, 2021, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on September 15, 2021 issued Order No. 21-UI-174776, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by September 29, 2021. On October 4, 2021, the Office of Administrative Hearings (OAH) emailed claimant a copy of Order No. 21-UI-174776 at their email address on file. On October 5, 2021, Order No. 21-UI-174776 became final without claimant having filed a response to the appellant questionnaire or an application for review of Order No. 21-UI-174776 with the Employment Appeals Board (EAB).

On November 6, 2021, claimant filed a late response to the appellant questionnaire. On January 13, 2022, ALJ Kangas mailed a letter to claimant stating that because claimant's response to the appellant questionnaire was late, OAH would not consider claimant's late response to the appellant questionnaire or issue another order, and Order No. 21-UI-174776 remained in effect. On January 18, 2022, claimant filed a late application for review of Order No. 21-UI-174776 with EAB. On March 2, 2022, EAB issued EAB Decision 2022-EAB-0125, dismissing claimant's late application for review without prejudice, subject to their right to request reconsideration and provide additional evidence to EAB regarding the reason(s) for the late filing. On March 22, 2022, claimant filed a timely request for reconsideration of EAB Decision 2022-EAB-0125.

**EVIDENTIARY MATTER:** EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is claimant's request for

reconsideration and additional evidence attached thereto that 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) On February 11, 2021, the Department mailed the February 11, 2021 administrative decision to claimant's address of record on file with the Department. The February 11, 2021 administrative decision stated, "You have the right to appeal this decision if you do not believe it is correct. Your request for appeal must be received by March 3, 2021." Exhibit 1 at 2. Claimant did not receive the administrative decision because, at the time, claimant used a mailing address that required them to "go[] through two sometimes three different people" to receive mail. EAB Exhibit 1 at 5.

(2) Claimant did not realize the Department had issued the February 11, 2021 decision and denied their PUA eligibility because when claimant monitored their claim status online, the status showed as "not processed yet." EAB Exhibit 1 at 2 (capitalization in original removed). On August 18, 2021, claimant called the Department for more information and was connected to the "appeals dep[artment]" where a representative assisted them in filing a request for hearing on the February 11, 2021 decision. EAB Exhibit 1 at 2 (capitalization in original removed).

(3) On September 15, 2021, OAH mailed Order No. 21-UI-174776 to claimant's address of record on file. On October 4, 2021 OAH emailed a copy of the order to claimant's email address on file. Order No. 21-UI-174776 stated, "You may appeal this decision by filing the attached form Application for Review with the Employment Appeals Board within 20 days of the date that this decision is mailed." Order No. 21-UI-174776 at 2. Claimant was living in their car at the time and did not receive Order No. 21-UI-174776 via regular mail. EAB Exhibit 1 at 2. Claimant also did not receive the October 4, 2021 email from OAH to which Order No. 21-UI-174776 was attached. EAB Exhibit 1 at 4. On November 6, 2021, claimant sent an email to the Department in which they "tr[ie]d to guess what wording to use in trying to get a response" about the status of their appeal. EAB Exhibit 1 at 4. OAH construed claimant's November 6, 2021 email as a response to the appellant questionnaire attached to Order No. 21-UI-174776.

(4) On January 13, 2022, claimant received ALJ Kangas' letter stating that OAH would not consider claimant's late response to the appellant questionnaire or issue another order, and that Order No. 21-UI-174776 remained in effect. After learning of the existence of Order No. 21-UI-174776 through ALJ Kangas' letter, claimant filed an application for review of Order No. 21-UI-174776 on January 18, 2022.

**CONCLUSIONS AND REASONS:** Claimant's request for reconsideration is allowed. Claimant's late application for review of Order No. 21-UI-174776 is allowed. Claimant's late request for hearing on the February 11, 2021 administrative decision is allowed. This matter is remanded for a hearing on the merits of the February 11, 2021 administrative decision.

**Request for Reconsideration.** ORS 657.290(3) authorizes the Employment Appeals Board, upon its own motion or at the request of a party, to reconsider any previous decision of the Employment Appeals Board, including "the making of a new decision to the extent necessary and appropriate for the correction of previous error of fact or law." *See also* OAR 471-041-0145(1) (May 13, 2019). The

request is subject to dismissal unless it is filed on or before the 20th day after the decision sought to be reconsidered was mailed. OAR 471-041-0145(2).

EAB dismissed claimant's late application for review without prejudice and subject to claimant filing a timely request for reconsideration within 20 days after EAB's dismissal decision was issued. Claimant filed a request for reconsideration consistent with the requirements set forth in OAR 471-041-0145. The request for reconsideration therefore is allowed.

**Late Application for Review.** An application for review is timely if it is filed within 20 days of the date that OAH mailed the order for which review is sought. ORS 657.270(6); OAR 471-041-0070(1) (May 13, 2019). The 20-day filing period may be extended a "reasonable time" upon a showing of "good cause." ORS 657.875; OAR 471-041-0070(2). "Good cause" means that factors or circumstances beyond the applicant's reasonable control prevented timely filing. OAR 471-041-0070(2)(a). A "reasonable time" is seven days after the circumstances that prevented the timely filing ceased to exist. OAR 471-041-0070(2)(b). A late application for review will be dismissed unless it includes a written statement describing the circumstances that prevented a timely filing. OAR 471-041-0070(3).

The application for review of Order No. 21-UI-174776 was due by October 5, 2021. Because claimant did not file their application for review until January 18, 2022, the application for review was late.

The record shows claimant was living in their car at the time Order No. 21-UI-174776 was mailed to claimant's address on file, which more likely than not made receipt of the hearing order by mail impossible and therefore was a circumstance beyond claimant's reasonable control that prevented claimant from applying for review by the deadline. Similarly, although OAH emailed Order No. 21-UI-174776 to claimant's email address on file on October 4, 2021, claimant did not receive the October 4, 2021 email from OAH to which Order No. 21-UI-174776 was attached. Failure to receive the October 4, 2021 email was also a circumstance beyond claimant's reasonable control that prevented claimant from filing an application for review by the deadline.

The record further shows that claimant received ALJ Kangas' January 13, 2022 letter stating that OAH would not consider claimant's late response to the appellant questionnaire or issue another order, and that Order No. 21-UI-174776 remained in effect. Upon receiving this letter, claimant learned of the existence of Order No. 21-UI-174776 and the circumstance that prevented claimant from filing an application for review ceased to exist. The record shows that claimant filed an application for review on January 18, 2022, which was within a seven-day "reasonable time" of January 13, 2022. Accordingly, claimant established good cause to extend the deadline to file an application for review, and the late application for review is allowed.

**Late Request for Hearing.** 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.

On February 11, 2021, the Department mailed the February 11, 2021 administrative decision to claimant at claimant's address of record on file with the Department. The 20-day deadline for claimant to file a timely request for hearing on that decision was March 3, 2021. Claimant did not file a request for hearing on the February 11, 2021 administrative decision until August 18, 2021. Accordingly, claimant's request for hearing was late.

The record shows that circumstances beyond claimant's reasonable control prevented them from filing a request for hearing by the deadline. At the time the Department issued the administrative decision, claimant used a mailing address that required them to "go[] through two sometimes three different people" to receive mail. EAB Exhibit 1 at 5. The record supports the conclusion that during this process, the February 11, 2021 administrative decision was more likely than not lost before claimant could receive it, which was a circumstance beyond their reasonable control. Claimant continued monitoring the status of their claim online but saw only that the claim was "not processed yet," and they were therefore not alerted to the existence of the February 11, 2021 administrative decision. EAB Exhibit 1 at 2. On August 18, 2021, claimant called the Department, and upon learning of the existence of the February 11, 2021 administrative decision, filed a request for hearing the same day, which was within a seven-day "reasonable time" of when the circumstances that prevented a timely filing ceased to exist. Thus, claimant established good cause to extend the deadline for filing a request for hearing, and claimant's late request for hearing is allowed.

On reconsideration, claimant's late application for review and late request for hearing are allowed. This matter is remanded for a hearing on the merits of the February 11, 2021 administrative decision.

**DECISION:** Order No. 21-UI-174776 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:** May 3, 2022

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Orders No. 21-UI-174776 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



# 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 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.

**Employment Appeals Board - 875 Union Street NE | Salem, OR 97311**  
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711  
[www.Oregon.gov/Employ/eab](http://www.Oregon.gov/Employ/eab)

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.