

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0138**

*Affirmed*  
*Late Request for Hearing Dismissed*

**PROCEDURAL HISTORY:** On July 29, 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 of October 11, 2020 through April 3, 2021 (weeks 42-20 through 13-21) and therefore was denied benefits for those weeks (decision # 110119). On August 18, 2021, decision # 110119 became final without claimant having filed a request for hearing. On August 24, 2021, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on September 8, 2021 issued Order No. 21-UI-174283, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by September 22, 2021. On September 15, 2021, claimant filed a timely response to the appellant questionnaire. ALJ Kangas considered claimant's response, and on January 4, 2022 issued Order No. 22-UI-183222, canceling Order No. 21-UI-174283 and re-dismissing claimant's request for hearing on decision # 110119 as late without good cause. On January 18, 2022, claimant filed an application for review of Order No. 22-UI-183222 with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant's argument contained information that was not part of the record, and did not show that factors or circumstances beyond claimant's reasonable control prevented them from offering the information on their response to the appellant questionnaire. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into the record when reaching this decision. EAB considered claimant's argument to the extent it was based on the record.

**FINDINGS OF FACT:** (1) On July 29, 2021, the Department mailed decision # 110119 to claimant's address on file with the Department. Decision # 110119 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 August 18, 2021." Exhibit 1 at 2.

(2) On July 31, 2021, decision # 110119 was delivered to claimant's mailbox. Claimant did not check their mail for "over a week" after the administrative decision was delivered. Exhibit 3 at 1.

**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 # 110119 was due by August 18, 2021. Because claimant did not file their request for hearing until August 24, 2021, the request was late. In their appellant questionnaire response, claimant stated that decision # 110119 was delivered to their mailbox on July 31, 2021, and that they did not check their mail for "over a week" afterwards. Exhibit 3 at 1. This statement suggests that claimant checked their mail and retrieved decision # 110119 sometime during the second week of August 2021, which ended on August 14, 2021. Claimant has not alleged that their delay in checking the mail was the reason for failing to file a timely request for hearing. Nevertheless, claimant's statement shows that they still had several days during which they could have filed a timely request for hearing on decision # 110119 after retrieving it from their mailbox.

Claimant also indicated on their appellant questionnaire response that they did not file a timely request for hearing because they had been covering for an ill colleague around the time that the request was due, and because they had been working with a Department representative on their claim and were "trying to be patient." Exhibit 3 at 1, 3. Neither of these circumstances showed that it was beyond claimant's reasonable control to file a timely request for hearing.

Additionally, although claimant's decision to "be patient" rather than filing a timely request for hearing was likely the result of a mistake on claimant's part, it was not an "excusable mistake" within the meaning of the administrative rules because it did not, for example, raise a due process issue, and was not the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply.

Claimant's late request for hearing on decision # 110119 is dismissed under ORS 657.875 and OAR 471-040-0010.

**DECISION:** Order No. 22-UI-183222 is affirmed.

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

**DATE of Service:** February 28, 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 ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

**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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