

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0181**

*Reversed & Remanded*

**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 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 October 15, 2021, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on October 25, 2021 issued Order No. 21-UI-177962, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by November 8, 2021. On November 12, 2021, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 21-UI-177962 with the Employment Appeals Board (EAB). On January 31, 2022, ALJ Kangas mailed a letter to claimant stating that because claimant's response to the appellant questionnaire was late, it would not be considered, another order would not be issued, and Order No. 21-UI-177962 remained in effect. This matter comes before EAB based upon claimant's November 12, 2021 application for review of Order No. 21-UI-177962.

**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) On February 5, 2021, claimant went to a treatment facility and participated in a 30-day program. EAB Exhibit 1 at 9.

(2) 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 decision stated, in relevant part, "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."

(3) Claimant did not believe they “received the appeal papers or administrative decision letter.” EAB Exhibit 1 at 1.

(4) On or about March 7, 2021, claimant left the treatment program. Thereafter, claimant began trying to contact the Department by telephone about PUA. In the beginning of September 2021, claimant “finally started to get through on the phone lines and . . . was told an adjudicator had to review [their] case and [claimant would] hear back from them.” EAB Exhibit 1 at 10. “Once [claimant] found out [claimant] was denied [they] went to the next step wanting to file a hearing.” EAB Exhibit 1 at 10.

**CONCLUSIONS AND REASONS:** Order No. 21-UI-177962 is set aside and this matter remanded for a hearing on whether claimant’s late request for hearing on the February 11, 2021 administrative decision should be allowed and, if so, 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.

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 October 15, 2021. Accordingly, claimant’s request for hearing was late.

In their appellant questionnaire response, claimant indicated that they were in a treatment facility during the time the February 11, 2021 administrative decision was mailed to their address of record and that they did not believe they received the decision. If claimant did not receive the administrative decision, claimant’s late request for hearing may have been the result of factors beyond their reasonable control. However, further inquiry is needed to determine whether claimant had good cause to file the late request for hearing, and filed the late request for hearing within a reasonable time. On remand, the ALJ should ask questions to confirm that claimant failed to receive the decision and, if so, to determine whether claimant’s failure to receive the administrative decision was due to a factor beyond claimant’s reasonable control or an excusable mistake. The ALJ should also ask questions to determine when claimant learned of the existence of the February 11, 2021 administrative decision, whether the circumstances that prevented a timely filing (if any) ceased to exist at that point, and, if so, whether claimant’s October 15, 2021 request for hearing was filed within seven-day “reasonable time” thereafter.

Order No. 21-UI-177962 therefore is reversed, and this matter remanded for a hearing on whether claimant’s late request for hearing should be allowed and, if so, the merits of the February 11, 2021 administrative decision.

**DECISION:** Order No. 21-UI-177962 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service: February 2, 2022**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-177962 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**

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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