

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0192**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On February 4, 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 February 24, 2021, the February 4, 2021 administrative decision became final without claimant having filed a request for hearing. On August 23, 2021, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on November 2, 2021 issued Order No. 21-UI-178809, 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 16, 2021. On November 22, 2021, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 21-UI-178809 with the Employment Appeals Board (EAB). On January 18, 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-178809 remained in effect. This matter comes before EAB based upon claimant's November 22, 2021 application for review of Order No. 21-UI-178809.

**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 their supporting letter, 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 4, 2021, the Department mailed the February 4, 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 February 24, 2021." Exhibit 1 at 2. Claimant may not have received the February 4, 2021 administrative decision.

(2) In Mid-March 2021, a representative from the Department contacted claimant and told them that the representative had discovered “fraud earnings” on their PUA claim for benefits that had been reported by a business in Arizona and that the representative had “never [seen] this on application[;] you need to contact Social Security office (sic).” EAB Exhibit 1 at 2-3. Claimant was further told that once they succeeded in having the fraudulent earnings removed from their social security record, they should “re-file” an “appeal.” EAB Exhibit 1 at 2, 4.

(3) In August 2021, claimant was successful in having the fraudulent earnings removed from their social security record. EAB Exhibit 1 at 4.

**CONCLUSIONS AND REASONS:** Order No. 21-UI-178809 is set aside and this matter remanded for a hearing on whether claimant’s late request for hearing on the February 4, 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 4, 2021, the Department mailed the February 4, 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 February 24, 2021. Claimant did not file a request for hearing on the February 4, 2021 administrative decision until August 23, 2021. Accordingly, claimant’s request for hearing was late.

Claimant’s appellant questionnaire response indicated that they may not have received the February 4, 2021 administrative decision after the Department mailed it to their address of record. 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. Similarly, claimant stated in their appellant questionnaire that in mid-March 2021, they were contacted by a representative from the Department who alerted claimant that they needed to contact their social security office to address potentially fraudulent earnings affecting their PUA claim, and that once the issue was corrected, to “re-file” an “appeal.” Claimant indicated that they followed these instructions and filed their August 23, 2021 request for hearing after successfully addressing the fraudulent earnings issue in August 2021. Under these circumstances, if claimant was told by a representative from the department to delay appealing their denial of PUA benefits, and if claimant relied on those instructions, claimant’s late request for hearing may have been the result of an excusable mistake. 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 administrative decision after the Department’s mailing, 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. Further inquiry should also address when claimant otherwise became aware of the February 4, 2021 administrative decision, including whether it was before, during or after claimant’s mid-March

2021 conversation with a Department employee. If that conversation was when claimant first learned of the decision's existence, or otherwise supports a finding of good cause, the ALJ should ask questions to determine whether the circumstances that prevented the timely filing of a request for hearing ceased to exist at that time or, based upon the substance of the conversation, at some later point in time. If it is determined that the circumstances that prevented claimant's timely filing of a request for hearing ceased to exist at some later point in time, further inquiry is needed to determine when, and whether claimant's August 23, 2021 request for hearing was filed within the seven-day "reasonable time" period thereafter.

Order No. 21-UI-178809 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 4, 2021 administrative decision.

**DECISION:** Order No. 21-UI-178809 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:** February 4, 2022

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-178809 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 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 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**  
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