

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0337**

*Late Application for Review Allowed*  
*Reversed ~ Late Request for Hearing Allowed*  
*Merits Hearing Required*

**PROCEDURAL HISTORY:** On August 13, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was ineligible for Pandemic Emergency Unemployment Compensation (PEUC) benefits for the weeks including March 14, 2021 through July 31, 2021 (weeks 11-21 through 30-21) (decision # 92603). On September 2, 2021, decision # 92603 became final without claimant having filed a request for hearing. On October 7, 2021, claimant filed a late request for hearing on decision # 92603. ALJ Kangas considered claimant's request, and on January 5, 2022 issued Order No. 22-UI-183320, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by January 19, 2022. On January 25, 2022, Order No. 21-UI-183320 became final without claimant having responded to the appellant questionnaire or having filed an application for review with the Employment Appeals Board (EAB). On January 27, 2022, claimant filed a late response to the appellant questionnaire and a late application for review of Order No. 22-UI-183320 with EAB. On March 15, 2022, ALJ Kangas mailed a letter stating that the Office of Administrative Hearings (OAH) would not consider claimant's questionnaire response or issue another order regarding this matter because the questionnaire response was late. This matter comes before EAB based upon claimant's January 27, 2022 late application for review of Order No. 21-UI-183320.

**EVIDENTIARY MATTER:** EAB 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 with attached statement and exhibits, 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) Claimant has a visual impairment. Claimant describes themselves as blind. EAB Exhibit 1 at 5, 7, 9.

(2) On August 13, 2021, the Department mailed decision # 92603 to claimant's address on file with the Department. Decision # 92603 stated, "Any appeal from this decision must be filed on or before September 02, 2021 to be timely." Exhibit 1 at 2.

(3) On August 21, 2021, claimant received decision # 92603 in the mail. EAB Exhibit 1 at 8. On October 7, 2021, claimant mailed a request for hearing on decision # 92603.

(4) Order No. 22-UI-183320, mailed to claimant on January 5, 2022, 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. 22-UI-183320 at 2. Order No. 22-UI-183320 also stated on its Certificate of Mailing, "Any party may appeal this Order by filing a Request for Review with the Employment Appeals Board no later than January 25, 2022."

**CONCLUSIONS AND REASONS:** Claimant's late application for review is allowed. Claimant's late request for hearing is also allowed. Claimant is entitled to a hearing on the merits of decision # 92603.

**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).

Claimant's application for review of Order No. 22-UI-183320 was due by January 25, 2022. Because claimant filed their application for review on January 27, 2021, their application for review was two days late. The record in this case, including the statement attached to claimant's appellant questionnaire response, demonstrates that claimant's visual impairment directly affected their ability to address the paperwork requirements associated with making a timely application for review and constituted a circumstance beyond claimant's reasonable control. As such, the record in this case supports the conclusion that claimant had good cause to extend the 20-day filing period and that claimant filed with a reasonable time to accommodate for claimant's visual impairment. Claimant's late application for review of order No. 22-UI-183320 is therefore 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.

Claimant's request for hearing was due by September 2, 2021. Because claimant did not mail their request for hearing until October 7, 2021, their request for hearing was late. However, claimant's appellant questionnaire response, and the supporting documentation attached thereto, shows that claimant had good cause for their late request for hearing and that it should therefore be allowed.

Claimant's appellant questionnaire response shows that on August 25, 2021, claimant prepared a letter to mail to the Department which addressed decision # 92603 and stated, in pertinent part, "This letter is my official notice to [the Department] that I am appealing the Administrative Decision . . . mailed to me with date 13 August 2021." EAB Exhibit 1 at 12. Claimant did not mail the letter, opting instead to email the letter's contents to the Department on August 25, 2021. With that email, claimant also included a statement stating that, "I need assistance to decide if I should be appealing this decision. I am including . . . a letter I have written to [the Department] to appeal – unless my questions are sufficiently answered by you first." EAB Exhibit 1 at 13-14. A representative from the Department responded to claimant's email the same day (August 25, 2021), stating in pertinent part that they would be contacting the adjudicator responsible for issuing decision # 92603 "to see if we can have [decision # 92603] ended" and that they "should have more information on this [for claimant] later." EAB Exhibit 1 at 15-18. In a subsequent email on September 2, 2021 (the deadline date for claimant to file a timely request for hearing), the same representative emailed claimant and stated, "It looked like the claim just needed a little adjusting . . . [s]o I took care of that today. So you should be back on track as of now!" EAB Exhibit 1 at 21. Despite these statements from the representative, claimant subsequently realized that "the AD # 92603 issues were being ignored" by the Department, so they "pulled together the emails and other information" and made their request for hearing on October 7, 2021. EAB Exhibit 1 at 8.

An objective view of the dialogue that occurred between claimant and the representative shows that, as of August 25, 2021, claimant intended to request a hearing on decision # 92603, and that their hearing request would have been timely had they filed it on that date. However, instead of requesting a hearing on that date, claimant elected to try to work with the Department to resolve their concerns about decision # 92603. During their ensuing dialogue with the representative, it was represented to claimant that decision # 92603 was erroneously decided, that it needed to be "ended," and that, as of September 2, 2021, claimant was "back on track." Under these circumstances, it was reasonable for claimant to believe they did not need to request a hearing on decision # 92603 because the Department had repeatedly suggested that the issues underlying decision # 92603 would be—and later, was—resolved. Thus, to the extent that claimant made a mistake in not filing a request for hearing prior to September 2, 2021, their mistake was an excusable mistake because the record in this case, which includes emails from the Department's representative, shows that their failure to do so was the result of their reasonable reliance on the representations made by the Department's representative.

When claimant subsequently determined that decision # 92603 had not in fact been "ended," they compiled the documentation needed to support a late request for hearing and filed that late request on October 7, 2021. Thus, under the specific circumstances presented in this case, claimant filed their late request for hearing within a reasonable time after the factors that had prevented their ability to timely file their request had ceased to exist, and therefore had good cause to file the late request for hearing. Therefore, claimant's late request for hearing is allowed, and claimant is entitled to a hearing on the merits of decision # 92603.

**DECISION:** Order No. 22-UI-183320 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service: March 25, 2022**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-183320 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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