

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0386**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On August 12, 2021, the Oregon Employment Department (the Department) served an Amended Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was not entitled to receive PUA benefits effective December 27, 2020. On September 1, 2021, the August 12, 2021 administrative decision became final without claimant having filed a request for hearing. On November 16, 2021, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on February 3, 2022 issued Order No. 22-UI-185545, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by February 17, 2022. On February 18, 2022, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 22-UI-185545 with the Employment Appeals Board (EAB). On March 23, 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 claimant's questionnaire response was late. This matter comes before EAB based upon claimant's February 18, 2022 application for review of Order No. 22-UI-185545.

**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 supporting documents, 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.

**FINDING OF FACT:** (1) In August 2021, claimant became ill.

(2) On August 12, 2021, the Department mailed the August 12, 2021 administrative decision to claimant's address on file with the Department. The August 12, 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 September 1, 2021." Exhibit 1 at 2.

(3) On September 9, 2021, claimant was admitted to the Portland Veterans Affairs Medical Center to address their illness and was treated for “acute psychosis.” EAB Exhibit 1 at 3, 5.

**CONCLUSIONS AND REASONS:** Order No. 22-UI-185545 is set aside and this matter is remanded for a hearing on whether claimant’s late request for hearing on the August 12, 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 August 12, 2021, the Department mailed notice of the August 12, 2021 administrative decision to claimant’s address of record on file with the Department. The 20-day deadline for claimant to file a timely request for hearing on the August 12, 2021 administrative decision was September 1, 2021. Claimant did not file a request for hearing on the August 12, 2021 administrative decision until November 16, 2021. As such, claimant’s request for hearing was late.

In their appellant questionnaire response, claimant stated that although they believed they received the August 12, 2021 administrative decision on August 12, 2021, they did not request a hearing prior to the September 1, 2021 deadline due to the effects from their illness. EAB Exhibit 1 at 3. Claimant also stated that they had been experiencing homelessness during this period of time which contributed to their inability to file a request for hearing before November 16, 2021. EAB Exhibit 1 at 3.

Claimant’s response suggests that their ability to file a timely request for hearing may have been prevented by either their illness, their homelessness, or both. If one or both of these circumstances prevented claimant from filing a timely request for hearing on the August 12, 2021 administrative decision, claimant may be able to establish that circumstances beyond their reasonable control prevented them from filing a timely request for hearing, and that claimant filed their request for hearing within a reasonable time after those circumstances ceased to exist. However, further inquiry is needed to address the circumstances surrounding claimant’s illness and their period of homelessness.

On remand, the ALJ should first clarify when claimant received the August 12, 2021 administrative decision. The ALJ should also address when in August 2021 claimant began experiencing the effects from their illness and to what extent (if any) those effects prevented claimant from timely filing a request for hearing. Likewise, further inquiry should address the timeframe involved in claimant’s period of homelessness, what arrangements claimant had in place (if any) for receiving their mail during this period, and what effect (if any) claimant’s period of homelessness had on their ability to file a timely request for hearing. To the extent it is determined that claimant’s illness or their period of homelessness (or both) constituted good cause for their inability to file a timely request for hearing, further inquiry should address whether claimant’s November 16, 2021 late request for hearing was filed within a reasonable time of the cessation of one or both of those factors. In other words, the ALJ should ask questions to determine when claimant’s illness or homelessness ceased to be a factor that prevented

claimant from requesting a hearing, and whether claimant filed a request for hearing within seven days after those factors ended.

Because further development of the record is necessary to determine whether claimant's late request for hearing of the August 12, 2021 administrative decision should be allowed and, if so, the merits of that decision, Order No. 22-UI-185545 is reversed, and this matter is remanded.

**DECISION:** Order No. 22-UI-185545 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:** April 1, 2022

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-185545 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**

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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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