

State of Oregon  
**Employment Appeals Board**  
875 Union St. N.E.  
Salem, OR 97311

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0393**

*Late Application for Review Allowed*  
*Order No 21-UI-182680 Reversed*  
*Late Request for Hearing Allowed*  
*Merits Hearing Required*

**PROCEDURAL HISTORY:** On May 28, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving unemployment insurance benefits effective May 24, 2020 (decision # 64622). On June 17, 2021, decision # 64622 became final without claimant having filed a request for hearing. On December 17, 2021, claimant filed a late request for hearing on decision # 64622.

ALJ Kangas considered claimant's request, and on December 27, 2021 issued Order No. 21-UI-182680, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by January 10, 2022. On January 18, 2022, Order No. 21-UI-182680 became final without claimant having filed a response to the appellant questionnaire with the Office of Administrative Hearings (OAH) or an application for review of Order No. 21-UI-182680 with the Employment Appeals Board (EAB). On January 19, 2022, claimant filed a late response to the appellant questionnaire and a late application for review of Order No. 21-UI-182680 with EAB. On March 23, 2022, ALJ Kangas mailed a letter stating that 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 19, 2022 application for review of Order No. 21-UI-182680.

**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 January 19, 2022 response to the appellant questionnaire and attachments thereto, 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 claimed benefits until November 2020, and did not claim benefits thereafter.<sup>1</sup>

(2) Claimant moved in February 2021.

(3) On May 28, 2021, the Department mailed decision # 64622 to claimant's address on file with the Department. Decision # 64622 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 June 17, 2021." Exhibit 1 at 2.

(4) In or around November 2021, the Department received notification that decision # 64622 had been returned as undeliverable; the Department did not have an updated address for claimant at that time.<sup>2</sup>

(5) Order No. 21-UI-182680, mailed to claimant on December 27, 2021, 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. 21-UI-182680 at 2. Order No. 21-UI-182680 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 18, 2022."

**CONCLUSIONS AND REASONS:** Claimant's late application for review of Order No. 21-UI-182680 is allowed. Order No. 21-UI-182680 is reversed and this matter remanded for a hearing on the merits of decision # 64622.

**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).

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<sup>1</sup> EAB has taken notice of these facts, which are contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). Any party that objects to our taking notice of this information 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 noticed fact will remain in the record.

<sup>2</sup> EAB has taken notice of these facts, which are contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). Any party that objects to our taking notice of this information 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 noticed fact will remain in the record.

The application for review of Order No. 21-UI-182680 was due by January 18, 2022. Because claimant did not file the application for review until January 19, 2022, the application for review was late. In a statement enclosed with claimant's response to the appellant questionnaire, claimant stated, "I originally faxed this document on January 3, 2022, however I have since realized I missed the back page and additional information." EAB Exhibit 1 at 1. The appellant questionnaire itself is dated December 31, 2021, while the application for review form is dated January 19, 2022. EAB Exhibit 1 at 3, 4.

While the record does not contain any other indication that OAH received the January 3, 2022 fax, the fact that OAH may not have received (or failed to process) the fax does not prove that claimant did not submit it on that date. Therefore, the record shows that, more likely than not, claimant submitted a timely response to the appellant questionnaire, which OAH did not receive or process. Further, the fact that claimant wrote the date on the application for review as January 19, 2022 suggests that claimant did not submit an application for review with the original fax on January 3, 2022, therefore confirming that claimant did not file a timely application for review. However, because claimant submitted a timely response to the appellant questionnaire, they had reason to believe that OAH would consider the information they included with the questionnaire response and issue another order. It is therefore reasonable to infer that claimant's delay in filing the application for review was caused by that mistaken belief, which itself was based on a factor beyond claimant's reasonable control—OAH's failure to receive or process their January 3, 2022 fax. That factor persisted until January 19, 2022, when claimant ultimately filed the application for review. Claimant therefore filed the application for review within a reasonable time after the factor that prevented the timely filing ceased to exist. Accordingly, claimant's late application for review is 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. Good cause does not include failure to receive a document due to not notifying the Employment Department or Office of Administrative Hearings of an updated address while the person is claiming benefits or if the person knows, or reasonably should know, of a pending appeal. OAR 471-040-0010(1)(b)(A).

The request for hearing on decision # 64622 was due by June 17, 2021. Because claimant did not file their request for hearing until December 17, 2021, the request was late. In their response to the appellant questionnaire, claimant indicated that they received decision # 64622 on December 14, 2021. EAB Exhibit 1 at 2. They further explained that they moved in February 2021, never received a copy of the administrative decision, and only learned of its existence on December 14, 2021 when they received a phone call from the Department. EAB Exhibit 1 at 3. From the evidence in the record, it is reasonable to infer that claimant's failure to file a timely request for hearing was the result of their failure to receive the administrative decision, which itself was caused by their having moved without notifying the Department of their new address.

Had claimant either been claiming benefits at the time or had they known or reasonably should have known about a pending appeal, such circumstances would not be considered good cause under OAR 471-040-0010(1)(b)(A). However, claimant was not claiming benefits at the time that decision # 64622

was issued, and had discontinued doing so approximately six months prior to its issuance. Similarly, there is no indication in the record that claimant knew or had reason to know of a pending appeal at the time. As such, OAR 471-040-0010(1)(b)(A) does not bar a finding of good cause for filing the late request for hearing. On the contrary, claimant's explanation shows that they neither knew nor had reason to know of decision # 64622 until they received a call from the Department on December 14, 2021. Claimant therefore failed to file a timely request for hearing due to factors beyond their control, which ceased on December 14, 2021. Further, because claimant filed their late request for hearing less than seven days after December 14, 2021, claimant filed the late request for hearing within a reasonable time after the factors beyond claimant's control ceased. Claimant therefore had good cause to file the late request for hearing on decision # 64622, and their late request for hearing should be allowed.

For the above reasons, claimant's late application for review of Order No. 21-UI-182680 and late request for hearing on decision # 64622 are allowed. Order No. 21-UI-182680 is therefore reversed, and the matter remanded for a hearing on the merits of decision # 64622.

**DECISION:** Claimant's late application for review of Order No. 21-UI-182680 is allowed. Order No. 21-UI-182680 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 5, 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 – 本判决会影响您的失业救济金。如果您不明白本判决，请立即联系就业上诉委员会。如果您不同意此判决，您可以按照该判决结尾所写的说明，向俄勒冈州上诉法院提出司法复审申请。

## 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

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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[www.Oregon.gov/Employ/eab](http://www.Oregon.gov/Employ/eab)

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