

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0475**

*Affirmed*  
*Late Request for Hearing Dismissed*

**PROCEDURAL HISTORY:** On April 19, 2021, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was not entitled to receive PUA benefits effective February 2, 2020. On May 10, 2021, the April 19, 2021 administrative decision became final without claimant having filed a timely request for hearing. On July 30, 2021, claimant filed a late request for hearing on the April 19, 2021 administrative decision. ALJ Kangas considered claimant's request, and on August 17, 2021 issued Order No. 21-UI-172694, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by August 31, 2021. On August 24, 2021, claimant filed a timely response to the appellant questionnaire. On November 9, 2021, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 21-UI-172694 was vacated and that a new hearing would be scheduled to determine whether claimant had good cause to file the late request for hearing and, if so, the merits of the April 19, 2021 administrative decision. On March 23, 2022, ALJ Frank conducted a hearing, and on March 31, 2022 issued Order No. 22-UI-190150, dismissing claimant's request for hearing as late without a showing of good cause, and leaving the April 19, 2021 administrative decision undisturbed. On April 16, 2022, claimant filed an application for review of Order No. 22-UI-190150 with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Prior to April 19, 2021, claimant had been experiencing issues with mail theft from his residential mailbox and he and his roommate had caught people stealing their mail. As a result, claimant's receipt of correspondence mailed to his residential mailbox was "hit-and-miss." Transcript at 8.

(2) On April 19, 2021, the Department mailed the April 19, 2021 administrative decision to claimant's address 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 May 10, 2021." Exhibit 1 at 2. The Department's April 19, 2021 mailing was not returned to the Department as undeliverable.

(3) On July 22, 2021, a representative from the Department spoke with claimant and advised him that he needed to provide the Department photographs of both his identification and social security cards to establish his eligibility for PUA. The lack of these photographs was the only remaining factor standing in the way of the Department finding that claimant was eligible for PUA benefits.

(4) On July 30, 2021, a representative from the Department had a discussion with claimant about appealing the April 19, 2021 administrative decision. Claimant filed a late request for hearing on the April 19, 2021 administrative decision that same day.

**CONCLUSIONS AND REASONS:** Claimant's late request for hearing is dismissed.

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 April 19, 2021, the Department mailed the April 19, 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 April 19, 2021 administrative decision was May 11, 2021. Claimant did not file a request for hearing on the April 19, 2021 administrative decision until July 30, 2021. As such, claimant's request for hearing was late.

At hearing, claimant provided somewhat conflicting testimony as to whether, or when, he received the April 19, 2021 administrative decision. Initially, claimant stated that he did not believe that he had received the decision and noted that he and his roommate had, on several occasions, "caught people at [their] mailbox . . . taking mail." Transcript at 8. However, later in the hearing claimant testified that he did not understand why, as of July 22, 2021, the identification issue was holding up his PUA claim. Transcript at 10. As part of that testimony, claimant explained that it was his belief that prior to July 22, 2021 he had provided the requested identification information to the Department and had been waiting to hear back on the status of his claim thereafter when "[he] got another letter that said that [he] was denied, and [he] didn't understand . . . why." Transcript at 10-11. Claimant testified that the denial letter he was referring to "may have been" the April 19, 2021 administrative decision, but claimant was unable to state when he received this correspondence. Transcript at 11.

The law presumes that a letter duly directed and mailed was received in the regular course of the mail. ORS 40.135(1)(q). While the record shows that claimant experienced mail theft at his residential mailbox during the relevant time period and that his receipt of mail was "hit-or-miss" as a result, the record also shows that claimant did receive a "denial letter" from the Department prior to July 22, 2021—which he admitted may have been the April 19, 2021 administrative decision. Furthermore, the record shows that the April 19, 2021 administrative decision was not returned to the Department as undeliverable after mailing, which further supports the presumption that claimant received the April 19, 2021 administrative decision after its mailing. In light of the totality of this evidence, claimant has failed to overcome the presumption that he received the April 19, 2021 administrative decision in the regular course of the mail. Because claimant has failed to overcome this presumption, and because he otherwise

failed to offer an explanation for why he did not timely request a hearing after receipt, the record fails to show that factors beyond claimant's reasonable control prevented him from timely requesting a hearing in this case.

To the extent that claimant's failure to file timely hearing requests was the result of a mistake on claimant's part, the record does not show that the mistake was an "excusable mistake" within the meaning of the administrative rules. The record does not, for example, raise a due process issue, and fails to show that any mistake was the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply. Because the record does not show that factors beyond claimant's reasonable control or an excusable mistake prevented him from filing a hearing request by the May 11, 2021 deadline, claimant failed to establish good cause to extend the filing deadline beyond that date. Therefore, claimant's late request for hearing on the April 19, 2021 administrative decision is subject to dismissal under ORS 657.875 and OAR 471-040-0010.

**DECISION:** Order No. 22-UI-190150 is affirmed.

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

**DATE of Service:** May 11, 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 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**  
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711  
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