

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0658**

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

**PROCEDURAL HISTORY:** On January 3, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit working for the employer without good cause and was disqualified from receiving unemployment insurance benefits effective January 3, 2021 (decision # 83145). On January 24, 2022, decision # 83145 became final without the claimant or the employer having filed a request for hearing. On February 10, 2022, the employer filed a late request for hearing, which the Office of Administrative Hearings (OAH) construed as a request for hearing filed by claimant. ALJ Kangas considered the request, and on May 16, 2022, issued Order No. 22-UI-193847, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by May 30, 2022. On June 6, 2022, Order No. 22-UI-193847 became final without claimant having filed a response to the appellant questionnaire or having filed an application for review with the Employment Appeals Board (EAB). On June 9, 2022, claimant filed a late application for review with EAB.

**EVIDENTIARY MATTER:** EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is claimant's response to the appellant questionnaire, which also comprises the written statement claimant provided with their late application for review, 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 January 3, 2022, the Department mailed decision # 83145 to claimant's address on file with the Department. Decision # 83145 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 January 24, 2022." Exhibit 1 at 2.

(2) At some point before January 3, 2022, claimant's mailbox was damaged, which caused claimant's mail to be kept at their local post office instead of being delivered to their home. The post office that was holding the mail was open during limited hours. Claimant's only source of transportation was their husband's car, which their husband used to get to and from work. Claimant's husband worked during the limited hours the post office was open, so claimant rarely had access to the car to go to the post office to get their mail. Because of these circumstances, claimant often did not receive their mail for several weeks at a time. EAB Exhibit 1 at 2.

(3) On February 9, 2022, claimant received decision # 83145, which concluded that claimant had voluntarily quit working for the employer. Claimant disagreed with the administrative decision, and spoke with their employer "to find out if they had denied [claimant's] claim." EAB Exhibit 1 at 2. The employer confirmed that they mistakenly reported to the Department that claimant had quit when, in fact, they were "waiting to have [claimant] return" to work when the employer "was able to get [their] business back operating to do so." Exhibit 2 at 2.

(4) On February 10, 2022, the employer contacted the Department by email advising that they "made a mistake regarding this employee in which [they] reported [claimant] had quit which was NOT the case." Exhibit 2 at 2 (capitalization in original). The employer's email further stated, "I would like to do anything to clarify this mistake" and requested an appeal of decision # 83145, which was construed as a request for hearing filed by claimant. Exhibit 2 at 2.

(5) On May 16, 2022, OAH mailed Order No. 22-UI-193847 to claimant's address on file with OAH. Order No. 22-UI-193847 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-193847 at 2. Order No. 22-UI-193847 also stated on its certificate of mailing that "Any party may appeal this Order by filing a Request for Review with the Employment Appeals Board no later than June 6, 2022."

(6) On the date that OAH mailed Order No. 22-UI-193847 to claimant, and continuing thereafter, claimant's difficulties receiving mail persisted. EAB Exhibit 1 at 1. On June 6, 2022, claimant received Order No. 22-UI-193847. On June 9, 2022, claimant filed an application for review of Order No. 22-UI-193847.

**CONCLUSIONS AND REASONS:** Claimant's late application for review is allowed. Order No. 22-UI-193847 is reversed, claimant's late request for hearing is allowed, and a hearing on the merits of decision # 83145 is required.

**Late Application for Review.** An application for review is timely if it is filed within 20 days of the date that the Office of Administrative Hearings (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).

The application for review of Order No. 22-UI-193847 was due by June 6, 2022. Because claimant did not file their application for review until June 9, 2022, the application for review was late. Claimant provided a written statement with the application for review. In it, claimant explained that their mailbox had been damaged, which caused claimant's mail to be kept at their local post office instead of being delivered to their home. The post office was open only during limited hours, and at times when claimant lacked transportation to the post office due to their husband's work schedule. Because of these circumstances, claimant often did not receive their mail for several weeks at a time. EAB Exhibit 1 at 2. These difficulties receiving mail were ongoing when OAH mailed Order No. 22-UI-193847 to claimant and continued thereafter. EAB Exhibit 1 at 1. On June 6, 2022, the date that her late application for review was dated, claimant received Order No. 22-UI-193847.<sup>1</sup>

Claimant's evidence is sufficient to show that they failed to file a timely application for review because of their damaged mailbox and limited transportation options, which were circumstances beyond their reasonable control. Those circumstances ceased to exist on June 6, 2022 when claimant received the order under review. Claimant filed their application for review three days later. Claimant therefore filed their application for review within a seven-day reasonable time after the circumstances that prevented a timely filing ceased to exist. Thus, claimant established good cause to extent the filing deadline to June 9, 2022, and the 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.

On January 3, 2022, the Department mailed decision # 83145 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 January 24, 2022. Claimant did not file a request for hearing on decision # 83145 until February 10, 2022. Accordingly, claimant's request for hearing was late.

The order under review dismissed claimant's appeal because it concluded that claimant failed to show good cause to extend the deadline to February 10, 2022. Order No. 22-UI-193847 at 1. The record on review does not support this conclusion.

The record on review shows that claimant did not receive decision # 83145 because their mailbox had been damaged, which caused claimant's mail to be kept at their local post office instead of being delivered to their home. Further, the post office was open only during limited hours at times when claimant lacked transportation to the post office due to their husband's work schedule. Because of these circumstances, claimant did not receive decision # 83145 until February 9, 2022. This evidence shows that claimant's failure to file a request for hearing by the January 24, 2022 deadline was the result of a factor beyond their reasonable control. On February 9, 2022, when claimant received the administrative decision, that factor ceased to exist. The next day, February 10, 2022, claimant filed a request for

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<sup>1</sup> The record does not conclusively show when claimant received Order No. 22-UI-193847. However, claimant's signature on their application for review is dated June 6, 2022. In the absence of any other evidence to show when claimant received Order No. 22-UI-193847, it is reasonable to conclude that they received it on June 6, 2022.

hearing. Claimant therefore filed their request for hearing within a seven-day reasonable time after the factor that prevented a timely filing ceased to exist. Accordingly, claimant established good cause to extend the deadline to file a request for hearing on decision # 83145 to February 10, 2022. Claimant's late request for hearing is therefore allowed, and claimant is entitled to a hearing on the merits of decision # 83145.

**DECISION:** Order No. 22-UI-193847 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service:** June 24, 2022

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-193847 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 ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄໍາຕັດສິນນີ້.

**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.

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