

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0837**

*Late Application for Review Allowed*  
*Order No. 22-UI-191492 Reversed ~ Request for Hearing Allowed*  
*Merits Hearing Required*

**PROCEDURAL HISTORY:** On December 17, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and therefore was disqualified from receiving unemployment insurance benefits effective July 11, 2021 (decision # 82858). On January 6, 2022, decision # 82858 became final. On January 21, 2022 claimant filed a late request for hearing. ALJ Kangas reviewed claimant's request, and on April 18, 2022 issued Order No. 22-UI-191492, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by May 2, 2022. On May 9, 2022, Order No. 22-UI-191492 became final without claimant having filed a response to the appellant questionnaire or an application for review of Order No. 22-UI-191492 with the Employment Appeals Board (EAB). On July 25, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

**EVIDENTIARY MATTER:** EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence includes claimant's emails from January 6, 8, and 10, 2022, and from July 25 and 26, 2022 that have been marked as EAB Exhibit 1. Copies of EAB Exhibit 1 have been 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 December 17, 2021, the Department mailed administrative decision # 82858 to claimant's address on file with the Department. The 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 no later than January 6, 2022." Exhibit 1 at 2.

(2) On January 6, 2022, claimant filed a timely request for hearing on decision # 82858. EAB Exhibit 1 at 3. Due to error not attributable to claimant, claimant's request for hearing was not received or processed by the Office of Administrative Hearings (OAH).

(3) On January 8, 2022, claimant sent an email following up on his request for hearing which stated "I was filing an appeal to a disqualification letter, I sent the information to the provided email on the letter I had received before the deadline. A automated message notified me that the box is not monitored and my form shall not be read. Please advise." EAB Exhibit 1 at 5. On January 10, 2022, claimant received replies back from OED requesting additional information, to which claimant replied. EAB Exhibit 1 at 5 and 6.

(4) On January 21, 2022, claimant sent an email following up on his January 6, 2022 email request for hearing, and the subsequent January 8, 2022 and January 10, 2022 emails. Claimant's January 21, 2022 email indicates that claimant was having difficulty and requested that his appeal request be routed to the "appropriate person in the appeals department." Exhibit 2 at 2.

(5) Claimant's January 21, 2022 email was construed by OAH as a late request for hearing. The record does not indicate claimant's emails dated January 6, 8, or 10, 2022 were sent to OAH with claimant's January 21, 2022 email. On April 18, 2022, ALJ Kangas issued Order No. 22-UI-191492, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by May 2, 2022. On May 9, 2022, Order No. 22-UI-191492 became final without claimant having filed a response to the appellant questionnaire or an application for review of Order No. 22-UI-191492 with the Employment Appeals Board (EAB).

(6) On July 25, 2022, claimant sent an email to the Department stating, in part, that he had emailed several times "after being told this would be routed to OAH but I keep receiving info from OED they cannot do anything as it is under OAH's purview now . . . I have called . . . emailed this email, emailed the UI email, OED's email, and now 7 months later I receive a letter that the appeal was denied because it was late (it was not and I can provide several exchanges of the emails with OED when it was submitted) . . ." EAB Exhibit 1 at 1-2. On July 26, 2022, claimant forwarded the January 6, 2022 email he sent requesting a hearing on decision # 82858. EAB Exhibit 1 at 3-4.

(7) Claimant's July 25, 2022 and July 26, 2022 emails were construed as a late application for review of Order No. 22-UI-191492 and sent to EAB.

**CONCLUSIONS AND REASONS:** Claimant's late application for review of Order No. 22-UI-191492 is allowed. Order No. 22-UI-191492 is reversed and this matter remanded to OAH for a hearing on the merits of decision # 82858.

**Late Application for Review.** The first issue before EAB is whether claimant's late application for review of Order No. 22-UI-191492 should be allowed. 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).

Claimant's application for review of Order No. 22-UI-191492 was due no later than May 9, 2022. Because claimant did not file what was construed as his application for review until July 25, 2022, the application for review was late. The record in this case, however, indicates that claimant filed a timely request for hearing on January 6, 2022, OAH did not receive the January 6, 2022 request and instead received an email dated January 21, 2022 which was construed as a late request for hearing and resulted in the issuance of Order No. 22-UI-191492 by error. This was a circumstance beyond claimant's reasonable control. Further, because the record shows that claimant was unable to fix this error, the circumstances that prevented claimant from timely filing the application for review continued through the date that claimant's attempts to resolve the error were construed as a late application for review. Claimant therefore filed the application for review within a reasonable time. Claimant's late application for review of Order No. 22-UI-191492 therefore is allowed.

**Late Request for Hearing.** The second issue before EAB is whether claimant's request for hearing on decision # 82858 mailed to the claimant on December 17, 2021 should be allowed. The deadline to file a timely request for hearing on decision # 82858 was January 6, 2022. The record shows that claimant filed a timely request for hearing on January 6, 2022. EAB Exhibit 1 at 3. Because claimant has established his request for hearing was timely filed, claimant is entitled to a hearing on the merits of administrative decision # 82858.

**DECISION:** Claimant's late application for review of Order No. 22-UI-191492 is allowed, Order No. 22-UI-191492 is set aside, and this matter is remanded for further proceedings consistent with this order.

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

**DATE of Service: August 29, 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](http://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.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



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

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.