

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0881**

*Late Application for Review Dismissed*

**PROCEDURAL HISTORY:** On September 29, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct, disqualifying claimant from receiving unemployment insurance benefits effective July 5, 2020 (decision # 84453). Claimant filed a timely request for hearing on decision # 84453. On October 27, 2021, the Office of Administrative Hearings (OAH) served notice of a hearing on decision # 84453 scheduled for November 10, 2021.

On October 28, 2021, the Department served notice of an administrative decision replacing and invalidating decision # 84453, but reaching the same conclusion as decision # 84453 (decision # 83458). On November 5, 2021, claimant filed a timely request for hearing on decision # 83458.

On November 10, 2021, claimant failed to appear at the hearing on administrative decision # 84453, and ALJ Scott issued Order No. 21-UI-179521, dismissing claimant's request for hearing on decision # 84453 due to claimant's failure to appear. On November 17, 2021, OAH served notice of a hearing on decision # 83458 scheduled for December 1, 2021. On November 19, 2021, claimant filed a timely request to reopen the hearing on decision # 84453.

On December 1, 2021, ALJ Smith conducted a hearing on decision # 83458, and on December 3, 2021 issued Order No. 21-UI-181032, reversing decision # 83458 by concluding that claimant's discharge by the employer was not for misconduct, and did not disqualify claimant from receiving benefits. On December 23, 2021, Order No. 21-UI-181032 became final without the employer having filed an application for review with the Employment Appeals Board (EAB).

On or about July 19, 2022, ALJ Kangas considered claimant's request to reopen the hearing on decision # 84453, and on July 19, 2022 issued Order No. 22-UI-198532, denying the request and dismissing claimant's request for hearing on decision # 84453 for lack of jurisdiction and leaving Order No. 21-UI-179521 undisturbed. On August 8, 2022, Order No. 22-UI-198532 became final without the employer having filed an application for review of the order with EAB. On August 9, 2022, the employer filed a late application for review of Order No. 22-UI-198532 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 employer's 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.

**FINDING OF FACT:** Order No. 21-UI-198532, mailed to the employer on July 19, 2022, 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-198532 at 3. Order No. 21-UI-198532 also stated on its Certificate of Mailing, "Any appeal from this Order must be filed on or before August 8, 2022 to be timely."

**CONCLUSIONS AND REASONS:** The employer's late application for review of Order No. 21-UI-198532 is dismissed.

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. 21-UI-198532 was due by August 8, 2022. Because the employer did not file their application for review until August 9, 2022, the application for review was late. The employer's application for review did not include a written statement describing the circumstances that prevented the employer from filing the application for review by the August 8, 2022 deadline. Accordingly, the employer did not show good cause for the late application for review, and the employer's late application for review is dismissed.

Even if the employer had filed a timely application for review, there is no justiciable controversy before EAB based upon the employer's application for review. *See accord Barcik v. Kubiacyk*, 321 Or 174, 895 P2d 765 (1995). Administrative decision # 84453 was replaced and invalidated by administrative decision # 83458. Order No. 21-UI-181032 reversed decision # 83458 by concluding that claimant's discharge by the employer was not for misconduct, and did not disqualify claimant from receiving benefits. On December 23, 2021, Order No. 21-UI-181032 became final without the employer having filed an application for review with EAB. Accordingly, there is no jurisdiction to address claimant's request to reopen the hearing on decision # 84453, or therefore the employer's application for review of Order No. 21-UI-198532, which denied claimant's request to reopen that hearing for lack of jurisdiction.

**DECISION:** The application for review filed August 9, 2022 is dismissed. Order No. 21-UI-198532 remains undisturbed.

**DATE of Service: September 8, 2022**

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

**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 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 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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