

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0885-R**

*Request for Reconsideration Allowed*

*EAB Decision 2022-EAB-0885 Reversed on Reconsideration ~ Late Application for Review Allowed  
Order No. 22-UI-198717 Affirmed ~ Request to Reopen Denied*

**PROCEDURAL HISTORY:** On April 22, 2022, 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 April 19, 2020 (decision # 72403). Claimant filed a timely request for hearing. On May 16, 2022, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for May 24, 2022. On May 24, 2022, claimant failed to appear at the hearing, and ALJ Ramey issued Order No. 22-UI-194505, dismissing claimant's request for hearing for failure to appear. On May 31, 2022, claimant filed an application for review of Order No. 22-UI-194505 with the Employment Appeals Board (EAB), which was treated as a timely request to reopen the hearing pursuant to OAR 471-041-0060(4). ALJ Kangas considered the request, and on July 20, 2022 issued Order No. 22-UI-198717, denying the request and leaving Order No. 22-UI-194505 undisturbed. On August 9, 2022, Order No. 22-UI-198717 became final without claimant having filed an application for review with EAB. On August 10, 2022, claimant filed a late application for review of Order No. 22-UI-198717 with EAB. On September 7, 2022, EAB issued EAB Decision 2022-EAB-0885, dismissing claimant's late application for review without prejudice. On September 7, 2022, claimant filed a request for reconsideration of EAB Decision 2022-EAB-0885. This decision is issued pursuant to EAB's authority under ORS 657.290(3).

**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 statement enclosed with their request for reconsideration, 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(s) will remain in the record.

**FINDINGS OF FACT:** (1) On May 16, 2022, OAH served notice of a hearing scheduled for May 24, 2022. On May 24, 2022, claimant failed to appear at the hearing, and ALJ Ramey issued Order No. 22-UI-194505, dismissing claimant's request for hearing for failure to appear.

(2) On June 3, 2022, claimant filed a timely application for review of Order No. 22-UI-194505. The application for review form stated, in relevant part:

Note: if your request for hearing was dismissed because you failed to appear at the hearing, your application for review will be treated as a request to reopen under OAR 471-041-0060(4) (October 26, 2009). You must include a statement explaining why you failed to appear or your request will be dismissed. Unless your statement shows good cause for failing to appear at the hearing, your request will be denied.

Exhibit 5 at 2. Claimant's application for review did not include a statement explaining why they failed to appear at the hearing. On the application for review, claimant checked a box indicating that they would prefer to have EAB communicate with them via email, and provided an email address where EAB could send them correspondence.

(3) On June 8, 2022, EAB mailed claimant a letter via US mail notifying them that EAB was treating claimant's June 3, 2022 application for review as a request to reopen the hearing that claimant had missed, and that EAB would forward claimant's request to OAH. Exhibit 5 at 1. The letter also stated that OAH "would notify the parties by mail if any further proceedings are scheduled." Exhibit 5 at 1.

(4) ALJ Kangas considered claimant's request to reopen the hearing, and on July 20, 2022 issued Order No. 22-UI-198717, denying the request and leaving Order No. 22-UI-194505 undisturbed. Order No. 22-UI-198717 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-198717 at 3. Order No. 22-UI-198717 also stated on its Certificate of Mailing, "Any appeal from this Order must be filed on or before August 9, 2022 to be timely." On August 9, 2022, Order No. 22-UI-198717 became final without claimant having filed an application for review.

(5) On August 10, 2022, claimant filed a late application for review of Order No. 22-UI-198717. Claimant did not file their application for review by the timely filing deadline because they had been "expecting only email communication at [that] point." EAB Exhibit 1 at 1.

**CONCLUSIONS AND REASONS:** Claimant's request for reconsideration is allowed. On reconsideration, claimant's late application for review of Order No. 22-UI-198717 is allowed. Claimant's request to reopen the May 24, 2022 hearing is denied.

**Reconsideration.** ORS 657.290(3) authorizes the Employment Appeals Board to reconsider any previous decision of the Employment Appeals Board, including "the making of a new decision to the extent necessary and appropriate for the correction of previous error of fact or law." The request is subject to dismissal unless it includes a statement that a copy was provided to the other parties, and is filed on or before the 20<sup>th</sup> day after the decision sought to be reconsidered was mailed. OAR 471-041-0145(2) (May 13, 2019).

Claimant filed their request for reconsideration within 20 days after EAB Decision 2022-EAB-0885 was mailed, and the request included a statement that a copy was provided to the employer. Claimant filed the request in part to correct an error of law. As such, claimant's request for reconsideration is granted.

**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-198717 was due by August 9, 2022. Because claimant did not file their application for review until August 10, 2022, the application for review was late. In their statement enclosed with their request for reconsideration, claimant stated that they filed the late application for review because they were “fully expecting email communication from this department, as [they] had requested it twice before,” and that US mail was “not reliable” for them because they had moved twice within the preceding nine months. EAB Exhibit 1 at 1.

The record shows that claimant had, in fact, requested that EAB communicate with them via email when they filed their application for review of Order No. 22-UI-194505 on May 31, 2022. Further, the record shows that EAB notified claimant by mail—not email—that the application for review would be treated as a request to reopen the hearing at which claimant had failed to appear, and that OAH would thereafter communicate with claimant by mail. Based on this evidence, it is reasonable to conclude that claimant had no reason to expect that either EAB or OAH would be further communicating with them by mail rather than email, and that they therefore were not aware of Order No. 22-UI-198717 prior to the timely filing deadline.

As claimant reasonably believed that they could expect further communications via email, and as they also had issues with mail reliability at the time, this constituted circumstances beyond claimant’s reasonable control which prevented them from filing a timely application for review. Those circumstances likely ceased when claimant became aware that Order No. 22-UI-198717 had been mailed to them. As claimant filed their application for review of Order No. 22-UI-198717 only one day after the order became final, which likely was within seven days of when claimant became aware of Order No. 22-UI-198717, they filed within seven days after the circumstances ceased. Because claimant had good cause to file the late application for review of Order No. 22-UI-198717, and filed their late application for review within a reasonable time, their application for review is allowed.

**Request to Reopen.** ORS 657.270(5) provides that any party who failed to appear at a hearing may request to reopen the hearing, and the request will be allowed if it was filed within 20 days of the date the hearing decision was issued and shows good cause for failing to appear. “Good cause” exists when the requesting party’s failure to appear at the hearing arose from an excusable mistake or from factors beyond the party’s reasonable control. OAR 471-040-0040(2) (February 10, 2012). The party requesting reopening shall set forth the reason(s) for missing the hearing in a written statement, which the Office of Administrative Hearings (OAH) shall consider in determining whether good cause exists for failing to appear at the hearing. OAR 471-040-0040(3).

Claimant filed their application for review of Order No. 22-UI-19450, which was treated under OAR 471-041-0060(4) as a request to reopen the hearing, on May 31, 2022. As claimant filed the request within 20 days of the date that Order No. 22-UI-194505 was issued, claimant's request was timely. The form on which claimant filed their request to reopen the hearing advised them that the request would be dismissed unless they included a statement explaining why they failed to appear at the hearing. Despite this, claimant did not include such a statement.<sup>1</sup> Claimant's request to reopen the hearing therefore is subject to dismissal under OAR 471-040-0040(3).

**DECISION:** Claimant's request for reconsideration is allowed. On reconsideration, EAB Decision 2022-EAB-0885 is reversed, and claimant's late application for review is allowed. Order No. 22-UI-198717 is affirmed.

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

**DATE of Service:** November 22, 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.

**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.

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<sup>1</sup> Claimant explained why they failed to appear at the hearing in their request for reconsideration. EAB Exhibit 1 at 1. However, claimant did not offer this explanation in their request to reopen the hearing as required under OAR 471-040-0040(3), or show that factors or circumstances beyond their reasonable control prevented them from doing so. EAB therefore did not consider the explanation offered in claimant's request for reconsideration. *See* ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019).



# 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 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 الإستئناف 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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