

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-1072**

*Affirmed*  
*Late Request for Hearing Dismissed*

**PROCEDURAL HISTORY:** On April 29, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant filed late claims for benefits for the weeks of February 27 through April 16, 2022 and therefore was denied benefits for those weeks (decision # 101648). On May 19, 2022, decision # 101648 became final without claimant having filed a timely request for hearing. On May 26, 2022, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on September 14, 2022 issued Order No. 22-UI-202628, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by September 28, 2022. On October 3, 2022, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 22-UI-202628 with the Employment Appeals Board (EAB). On October 18, 2022, ALJ Kangas mailed a letter stating that because claimant's response to the appellant questionnaire was late, it would not be considered, another order would not be issued, and Order No. 22-UI-202628 remained in effect. This matter comes before EAB based on claimant's October 3, 2022 application for review of Order No. 22-UI-202628.

**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 with supporting documentation, which has been marked as EAB Exhibit 1, and a written argument submitted on October 26, 2022, which has been marked as EAB Exhibit 2. Copies of EAB Exhibits 1 and 2 have been provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 or 2 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 exhibits will remain in the record.

**FINDINGS OF FACT:** On April 29, 2022, the Department mailed decision # 101648 to claimant's address on file with the Department. Decision # 101648 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 May 19, 2022." DR Exhibit 1 at 2.

**CONCLUSIONS AND REASONS:** Claimant's late request for hearing on decision # 101648 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.

Decision # 101648 denied claimant benefits for the weeks of February 27 through April 16, 2022 because the claims for those weeks were filed late. On April 29, 2022, the Department mailed decision # 101648, to claimant's address on file with the Department. Claimant does not dispute that they received the administrative decision before the May 19, 2022 appeal deadline. EAB Exhibit 1 at 4. Claimant filed a request for hearing on May 26, 2022, which was after the deadline.

Although claimant indicates in their response to the Appellant Questionnaire that they filed a hearing request on May 2, 2022, which would have been a timely request for hearing, claimant provided no documentation to support the contention that they made a timely request for hearing on May 2, 2022. EAB Exhibit 1. More likely than not, claimant submitted documentation to the Department regarding their work search history before the May 19, 2022 deadline. This contention is supported by claimant's other responses to the Appellant Questionnaire, in which claimant states a Department employee indicated that claimant could "avoid" an appeal by providing their work search history, and by the emails between claimant and the Department employee regarding claimant's work search history. EAB Exhibit 1 at 1-2, 5-12. Claimant also states in their written argument that, "I never meant to submit an appeal request in the first place because I didn't think I needed to." EAB Exhibit 2. Had claimant had documentation showing they filed a timely request for hearing on May 2, 2022, they likely would have submitted that documentation with their response to the Appellant Questionnaire. Instead, the record shows that claimant first filed a request for hearing on May 26, 2022. DR Exhibit 2 at 2.

Claimant provided work search documentation to the Department, presumably to either avoid or resolve an issue other than claimant's failure to timely file claims addressed in decision # 101648. The documents submitted by claimant in EAB Exhibit 1 do not show that claimant discussed decision # 101648 with the Department, that claimant asked the Department if they could disregard decision # 101648 and its appeal deadline, or otherwise show any representation by the Department that claimant did not need to file a timely appeal on decision # 101648. EAB Exhibit 1. Claimant's failure to file a timely appeal of the administrative decision in this case was likely the result of a mistake on claimant's part, possibly, because they were confused about the basis of the denial, or because they thought they would not be denied benefits for the weeks at issue if they provided a work search history. However, it was not an "excusable mistake" within the meaning of the administrative rules because it did not, for example, raise a due process issue, and was not the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply. Claimant received the administrative decision before the appeal deadline and it was within claimant's reasonable control to review the decision, which states the denial was based on claimant's failure to timely file weekly claims, and file a timely request for hearing if they did not agree with the administrative decision.

Claimant therefore failed to establish good cause for the late request for hearing, and the request is dismissed.

**DECISION:** Order No. 22-UI-202628 is affirmed.

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

**DATE of Service:** November 10, 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 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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