

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-1091**

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

**PROCEDURAL HISTORY:** On August 6, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was disqualified from receiving unemployment insurance benefits effective November 17, 2019 (decision # 140904). On August 26, 2021, decision # 140904 became final without claimant having filed a request for hearing. On May 16, 2022, claimant filed a late request for hearing. On October 13, 2022, ALJ Lucas conducted a hearing, and on October 18, 2022, issued Order No. 22-UI-205344, dismissing claimant's late request for hearing of decision # 140904 as late without good cause and leaving decision # 140904 undisturbed. On October 31, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** EAB considered claimant's argument when reaching this decision.

**FINDINGS OF FACT:** (1) On August 6, 2021, the Department mailed decision # 140904 to claimant's address on file with the Department. Decision # 140904 concluded that claimant had voluntarily quit work and was disqualified from receiving benefits effective November 17, 2019. Decision # 140904 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 August 26, 2021." Exhibit 1 at 2.

(2) Claimant did not receive decision # 140904, and it became final on August 26, 2021.

(3) In mid- to late April 2022, claimant received an overpayment administrative decision, decision # 115011. See Exhibit 4. The overpayment reflected in the overpayment administrative decision was based

on benefits claimant received despite being subject to the disqualification established by decision # 140904.

(4) The overpayment administrative decision referred to decision # 140904 by stating, "Claimant was ineligible to receive these benefits due to the Administrative Decision(s) mailed August 6, 2021, which found claimant voluntarily left work without good cause." Exhibit 4 at 1. The overpayment administrative decision further stated that "The decision(s) which created the overpayment was not appealed by claimant or was not appealed in a timely manner and has now become final." Exhibit 4 at 1. The overpayment administrative decision stated that the deadline to file an appeal of it, not of decision # 140904, was May 4, 2022. The overpayment administrative decision did not refer to decision # 140904 by its number, it did not explain any appeal rights relating to decision # 140904, it did not state when decision # 140904 became final, and it did not list the employer to whom decision # 140904 pertained.

(5) Claimant was confused when he received the overpayment administrative decision. He retained counsel and filed a timely appeal of the overpayment administrative decision on May 3, 2022. Claimant's counsel requested claimant's file from the Department and, on May 10, 2022, received decision # 140904 among those materials. Claimant became aware of decision # 140904 on that date.

(6) On May 16, 2022, claimant's counsel filed a request for hearing on decision # 140904 on claimant's behalf. Exhibit 2 at 1.

**CONCLUSIONS AND REASONS:** Order No. 22-UI-205344 is reversed, claimant's late request for hearing is allowed, and a hearing on the merits of decision # 140904 is required.

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 August 6, 2021, the Department mailed decision # 140904 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 August 26, 2021. Claimant did not file a request for hearing on decision # 140904 until May 16, 2022. Accordingly, claimant's request for hearing was late.

The order under review dismissed claimant's late appeal for lack of good cause to extend the 20-day deadline because decision # 140904 was referenced in the overpayment administrative decision and claimant did not request an appeal of decision # 140904 within seven days of receiving the overpayment administrative decision. Order No. 22-UI-205344 at 3-4. The record does not support this conclusion.

The record shows that claimant did not receive decision # 140904 when the Department mailed it on August 6, 2021. This was a factor beyond claimant's reasonable control that prevented him from filing a timely appeal. This factor did not cease when claimant received the overpayment administrative decision. It is correct that the overpayment administrative decision referenced decision # 140904. However, it did so in an opaque and confusing manner. It referred to decision # 140904 not by its

number but by its date, used parentheses to pluralize the number of administrative decisions from that date, did not explain any appeal rights relating to decision # 140904, did not state when decision # 140904 became final, and did not list the employer to whom decision # 140904 pertained. The overpayment administrative decision also referred to decision # 140904, pluralized and without using its number, as having “now become final”, a description that could lead a reasonable person to conclude that it would be futile or impossible to file a late appeal of decision # 140904.

However, on May 10, 2022, when claimant received decision # 140904 among the materials in his file, he became aware of decision # 140904 and the factor preventing a timely appeal ceased. On May 16, 2022, claimant’s counsel made a request for hearing on decision # 140904 on claimant’s behalf. Claimant therefore filed his 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 # 140904 to May 16, 2022. Claimant’s late request for hearing is therefore allowed, and claimant is entitled to a hearing on the merits of decision # 140904.

**DECISION:** Order No. 22-UI-205344 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service:** December 27, 2022

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-205344 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 ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

**Arabic**

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**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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