

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-1139**

*Reversed & Remanded*

**PROCEDURAL HISTORY AND FINDINGS OF FACT:** On February 2, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and was therefore disqualified from receiving unemployment insurance benefits effective May 3, 2020 (decision # 141659). On February 22, 2021, decision # 141659 became final without claimant having filed a request for hearing. On March 28, 2022, the Department served notice of an administrative decision, based in part on decision # 141659, concluding that claimant received benefits to which they were not entitled and assessing an overpayment of \$1,208 in regular unemployment insurance (regular UI) benefits and \$4,800 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay to the Department (decision # 91528). On April 18, 2022, decision # 91528 became final without claimant having filed a request for hearing. On May 20, 2022, the Department served notice of an administrative decision denying claimant's request for a waiver of the overpayment of FPUC benefits that the Department had previously assessed on March 28, 2022 (decision # 75053). On June 9, 2022, decision # 75053 became final without claimant having filed a request for hearing. On June 15, 2022, claimant filed late requests for hearing on decisions # 141659, 91528, and 75053.

ALJ Kangas considered claimant's requests, and on September 20, 2022 issued Orders No. 22-UI-203156, 22-UI-203154, and 22-UI-203155, dismissing claimant's requests for hearing on decisions # 141659, 91528, and 75053, respectively, as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by October 4, 2022. On October 8, 2022, claimant filed a late response to the appellant questionnaire and timely applications for review of Orders No. 22-UI-203156, 22-UI-203154, and 22-UI-203155 with the Employment Appeals Board (EAB). On October 18, 2022, ALJ Kangas mailed a letter stating that the Office of Administrative Hearings (OAH) would not consider claimant's questionnaire response or issue another order regarding Order No. 22-UI-203156 because the questionnaire response was late. This matter comes before EAB based upon claimant's October 8, 2022 applications for review of Order No. 22-UI-203156, 22-UI-203154, and 22-UI-203155.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 22-UI-203156, 22-UI-203154, and 22-UI-203155. For case-tracking purposes, this decision is being issued in triplicate (EAB Decisions 2022-EAB-1139, 2022-EAB-1180, and 2022-EAB-1181).

**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, 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.

**CONCLUSIONS AND REASONS:** Orders No. 22-UI-203156, 22-UI-203154, and 22-UI-203155 are set aside and these matters remanded for hearings on whether claimant’s late requests for hearing on decisions # 141659, 91528, and 75053 should be allowed and, if so, the merits of those decisions.

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.

The requests for hearing on decisions # 141659, 91528, and 75053 were due by February 22, 2021, April 18, 2022, and June 9, 2022, respectively. Because claimant did not file their requests for hearing until June 15, 2022, the requests were late.

Claimant’s responses on the appellant questionnaire suggest that they may have failed to file timely requests for hearing due to factors beyond their reasonable control. However, further development of the record is necessary to determine if they were prevented from filing timely requests for hearing due to factors beyond their reasonable control and, if so, whether they filed their requests for hearing within a reasonable time after those factors ceased to exist. Orders No. 22-UI-203156, 22-UI-203154, and 22-UI-203155 therefore are reversed, and these matters remanded for hearings on whether claimant’s late requests for hearing on decisions # 141659, 91528, and 75053 should be allowed and, if so, the merits of those decisions.

**DECISION:** Orders No. 22-UI-203156, 22-UI-203154, and 22-UI-203155 are set aside, and these matters remanded for further proceedings consistent with this order.

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

**DATE of Service: December 13, 2022**

**NOTE:** The failure of any party to appear at the hearings on remand will not reinstate Orders No. 22-UI-203156, 22-UI-203154, and 22-UI-203155 or return these matters to EAB. Only timely applications for review of the subsequent orders will cause these matters 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**

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.

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