

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-1171**

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

**PROCEDURAL HISTORY:** On July 8, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant failed to register for work in accordance with the Department's rules and was ineligible for benefits from June 13 through 19, 2021 (week 24-21) and until the reason for the denial had ended. On July 28, 2021, the July 8, 2021 administrative decision became final without claimant having filed a request for hearing. On January 28, 2022, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on May 2, 2022 issued Order No. 22-UI-192648, dismissing claimant's the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by May 16, 2022. On May 10, 2022 claimant filed a timely response to the appellant questionnaire. On July 15, 2022, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 22-UI-192648 was vacated and that a new hearing would be scheduled to determine whether to allow claimant's late request for hearing and, if so, the merits of the July 8, 2021 administrative decision. On October 27, 2022, ALJ Smith conducted the hearing, and on November 4, 2022 issued Order No. 22-UI-206652, re-dismissing claimant's late request for hearing, leaving the July 8, 2021 administrative decision undisturbed. On November 25, 2022, claimant filed an application for review of Order No. 22-UI-206652 with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) On July 8, 2021, the Department mailed the July 8, 2021 administrative decision to claimant's address on file with the Department. The July 8, 2021 administrative decision 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 **07/28/2021**." Exhibit 1 at 1 (emphasis in original).

(2) Claimant did not receive the July 8, 2021 administrative decision. Claimant lived in an apartment complex and his mailbox was located among the mailboxes of numerous other tenants, which led to mail being mis-delivered on occasion, and claimant sometimes not receiving mail that was addressed to him.

(3) The effect of the July 8, 2021 administrative decision was to deny claimant benefits until he registered for work in accordance with the Department's rules. At some point after July 8, 2021,

claimant noticed he was not receiving benefits and made numerous calls to the Department in an effort to address the situation.

(4) On or shortly after January 21, 2022, in the course of one of claimant's calls to the Department, a Department representative advised claimant of the July 8, 2021 administrative decision and his right to appeal it. Claimant requested a hearing on the July 8, 2021 administrative decision on January 28, 2022.

**CONCLUSIONS AND REASONS:** Order No. 22-UI-206652 is reversed. Claimant's late request for hearing is allowed, and a hearing on the merits of the July 8, 2021 administrative decision 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 July 8, 2021, the Department mailed the July 8, 2021 administrative decision 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 July 28, 2021. Claimant did not file a request for hearing until January 28, 2022. Accordingly, claimant's request for hearing was late.

The order under review dismissed claimant's late request for hearing, concluding that claimant failed to establish that he filed his appeal within a seven-day reasonable time of when the factor that prevented a timely filing ceased to exist. Order No. 22-UI-206652 at 3. The record does not support this conclusion.

At hearing, claimant testified that he learned of his right to appeal the July 8, 2021 administrative decision in January 2022 and that he filed his appeal "within, you know, that week of – after I got the information from that call." Transcript at 24. The ALJ followed up, asking if claimant believed he learned of the administrative decision and his ability to appeal it within a week of January 28, 2022, to which claimant answered, "I believe so. It was that month." Transcript at 24-25. Thereafter, claimant testified that he "believe[d] so" but was "not certain" if he made his hearing request within ten days of learning about the administrative decision and his ability to appeal it, and that it was possible he filed his appeal eleven days afterward. Transcript at 25, 30.

Although claimant admitted to some uncertainty as to when he learned of his right to appeal the July 8, 2021 administrative decision, the record shows that he likely learned of the administrative decision and his right to appeal it within a week prior to the date he filed his appeal on January 28, 2022. The record shows that claimant did not receive the administrative decision in the mail, possibly because it had been mis-delivered to a neighbor, and did not learn of the administrative decision and his right to appeal it until on or shortly after January 21, 2022 (one week before January 28, 2022). Claimant's failure to file a request for hearing by the July 28, 2021 deadline therefore was the result of a factor beyond his reasonable control. When, on or shortly after January 21, 2022, claimant learned of the administrative decision and his ability to appeal it, the factor beyond claimant's control ceased to exist. Claimant filed his request for hearing on January 28, 2022.

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 to January 28, 2022. Claimant's late request for hearing on the July 8, 2021 administrative decision therefore is allowed, and claimant is entitled to a hearing on the merits of the decision.

**DECISION:** Order No. 22-UI-206652 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service:** January 12, 2023

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-206652 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

**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.



# 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، می توانید 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**  
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711  
[www.Oregon.gov/Employ/eab](http://www.Oregon.gov/Employ/eab)

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.