

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-1228**

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

**PROCEDURAL HISTORY:** On February 24, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct and that claimant was disqualified from receiving unemployment insurance benefits effective July 5, 2020 (decision # 62014). On March 16, 2021, decision # 62014 became final without claimant having filed a request for hearing. On July 20, 2022, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on October 27, 2022, issued Order No. 22-UI-206106 dismissing claimant's late request for hearing subject to claimant's right to submit an appellant questionnaire within fourteen days. On November 1, 2022, claimant filed a timely response to the appellant questionnaire. On November 3, 2022, the Office of Administrative Hearing (OAH) mailed a letter stating that Order No. 22-UI-20616 was vacated and that a new hearing would be scheduled to determine whether claimant's late request for hearing should be allowed and, if so the merits of decision # 62014. On November 28, 2022, ALJ Frank conducted a hearing, and on December 1, 2022, issued Order No. 22-UI-208655, dismissing claimant's late request for hearing of decision # 62014 as late without good cause and leaving decision # 62014 undisturbed. On December 13, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) On February 24, 2021, the Department mailed decision # 62014 to claimant's address on file with the Department. Decision # 62014 concluded that the employer discharged claimant for misconduct and that claimant was disqualified from receiving benefits effective July 5, 2020. Decision # 62014 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 March 16, 2021." Exhibit 1 at 2.

(2) Claimant did not receive decision # 62014 before it became final on March 16, 2021.

(3) In May 2022, claimant filed a new claim for unemployment benefits and filed weekly continuing claims thereafter. For approximately five weeks, claimant did not receive payment on her claim. Claimant inquired with the Department and learned this was due to an overpayment of which she was previously unaware. The overpayment was a result of decision # 62014.

(4) On July 20, 2022, claimant filed a request for hearing on the overpayment and decision # 62014. Claimant did not receive a copy of decision # 62014, which included her appeal rights, until it was sent to her with the Notice of Hearing.

**CONCLUSIONS AND REASONS:** Order No. 22-UI-208655 is reversed, claimant’s late request for hearing is allowed, and a hearing on the merits of decision # 62014 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 February 24, 2021, the Department mailed decision # 62014 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 March 16, 2021. Claimant did not file a request for hearing on decision # 62014 until July 20, 2022. Accordingly, claimant’s request for hearing was late.

The order under review dismissed claimant’s late request for hearing for lack of good cause to extend the 20-day deadline because it found claimant became aware of the administrative decision in May 2022 and claimant did not request an appeal of decision # 62014 within seven days of becoming aware of the decision. Order No. 22-UI-205344 at 3. The record does not support this conclusion.

The record shows that claimant did not receive decision # 62014 when the Department mailed it on February 24, 2021. This was a factor beyond claimant’s reasonable control that prevented her from filing a timely appeal. This factor did not cease when claimant failed to receive payment on a new claim in May 2022. Claimant testified that she became aware that a previous overpayment was preventing her new claim from being paid after five weeks of not receiving benefits. Audio Record at 22:12 to 22:40. However, it does not follow that claimant’s awareness of the overpayment meant that claimant was aware of the administrative decision that caused her to be overpaid when she had not received that administrative decision. The record does not show when claimant learned that the overpayment was a result of decision # 62014, however it does show that claimant did not receive a copy of decision # 62014 until after she requested a hearing on the overpayment. Therefore, it is more likely than not that she did not know the overpayment was the result of decision #62014 or of her appeal rights on decision #62014 prior to her July 20, 2022 request for hearing. Because the circumstances that prevented a timely filing continued until claimant filed her request for hearing on decision # 62014, that filing was made within a “reasonable time.” Claimant’s late request for hearing is therefore allowed, and claimant is entitled to a hearing on the merits of decision # 62014.

**DECISION:** Order No. 22-UI-208655 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: January 20, 2023**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-208655 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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