

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0006**

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

**PROCEDURAL HISTORY:** On April 21, 2022, 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 May 23, 2021 (decision # 72328). On May 11, 2022, decision # 72328 became final without claimant having filed a request for hearing. On August 23, 2022, claimant filed a late request for hearing. On December 12, 2022, ALJ Nyberg conducted a hearing at which the employer failed to appear, and on December 13, 2022 issued Order No. 22-UI-209694, dismissing claimant's request for hearing as late without good cause and leaving decision # 72328 undisturbed. On December 20, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant did not declare that he provided a copy of his argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

**FINDINGS OF FACT:** (1) On April 21, 2022, the Department mailed decision # 72328 to claimant's address on file with the Department. Decision # 72328 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 11, 2022." Exhibit 1 at 2.

(2) Claimant did not receive decision # 72328.

(3) On August 22, 2022, claimant received an overpayment administrative decision which was based, in part, on decision # 72328. The next day, August 23, 2022, claimant requested a hearing on the overpayment administrative decision and on decision # 72328.

**CONCLUSIONS AND REASONS:** Order No. 22-UI-209694 is reversed, claimant's late request for hearing is allowed, and a hearing on the merits of decision # 72328 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 April 21, 2022, the Department mailed decision # 72328 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 May 11, 2022. Claimant did not file a request for hearing on decision # 72328 until August 23, 2022. Accordingly, claimant's request for hearing was late.

The order under review concluded that claimant failed to show good cause to file his late request for hearing because claimant was presumed to have received decision # 72328 in the mail and, the order concluded, claimant did not overcome that presumption. Order No. 22-UI-209694 at 3. The record does not support this conclusion.

It is correct that documents "sent through the U.S. Postal Service by regular mail are presumed to have been received by the addressee, subject to evidence to the contrary." OAR 137-003-0520(10) (effective January 31, 2012); *See also* ORS 40.135(q) (setting forth a similar presumption in civil and criminal court proceedings). However, claimant rebutted the presumption because he provided evidence that he did not receive decision # 72328. At hearing, claimant testified that he did not receive the decision and that he had failed to receive mail in the past at his post office box. Audio Record at 19:27; 20:51 to 21:12. Thus, claimant overcame the presumption and claimant's firsthand account of non-receipt controls, not the presumption.

Accordingly, the record shows that claimant did not receive decision # 72328 in the mail and did not learn of its existence until he received the overpayment administrative decision on August 22, 2022. Thus, claimant's failure to file a request for hearing by the May 11, 2022 deadline was the result of a factor beyond his reasonable control. On August 22, 2022, when claimant learned of the existence of decision # 72328, the factor beyond claimant's control ceased to exist for claimant. The next day, August 23, 2022, claimant filed a request for hearing. Claimant therefore filed his request for hearing within a seven-day reasonable time after the factor that prevented him from timely filing ceased to exist. As such, claimant established good cause to extend the deadline to file a request for hearing on decision # 72328 to August 23, 2022. Claimant's late request for hearing is therefore allowed, and claimant is entitled to a hearing on the merits of decision # 72328.

**DECISION:** Order No. 22-UI-209694 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service: January 26, 2023**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-209694 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 ໄດ້ ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

**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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