

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0160**

*Late Applications for Review Allowed*  
*Orders No. 22-UI-210782 and 22-UI-210786 Reversed and Remanded*

**PROCEDURAL HISTORY:** On February 2, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not eligible to receive Trade Readjustment Allowances (TRA) benefits for the week of September 26, 2021 through October 2, 2021 (decision # 65647). On February 22, 2022, decision # 65647 became final without claimant having filed a request for hearing. On June 30, 2022, the Department served notice of an administrative decision, based in part on decision # 65647, concluding that claimant received benefits to which they were not entitled, and assessing an overpayment of \$9,072 in TRA benefits that claimant was required to repay to the Department (decision # 164919). On July 20, 2022, decision # 164919 became final without claimant having filed a request for hearing. On September 8, 2022, claimant filed late requests for hearing on decisions # 65647 and 164919.

ALJ Kangas considered claimant's requests, and on December 22, 2022 issued Orders No. 22-UI-210782 and 22-UI-210786, dismissing claimant's late requests for hearing on decisions # 65647 and 164919, respectively, subject to claimant's right to renew the requests by responding to an appellant questionnaire by January 5, 2023. On January 11, 2023, Orders No. 22-UI-210782 and 22-UI-210786 became final without claimant having filed a response to the appellant questionnaire or applications for review with the Employment Appeals Board (EAB). On February 1, 2023, claimant filed a late response to the appellant questionnaire and late applications for review of Orders No. 22-UI-210782 and 22-UI-210786 with EAB.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 22-UI-210782 and 22-UI-210786. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2023-EAB-0159 and 2023-EAB-0160).

**EVIDENTIARY MATTER:** EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of claimant's response to the appellant questionnaire and written statement enclosed with the application for review, and has been 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.

**FINDINGS OF FACT:** (1) On February 2, 2022, the Department mailed decision # 65647 to claimant's address on file with the Department. Decision # 65647 stated, "Any appeal from this decision must be filed on or before Feb[ruary] 22, 2022 to be timely." Order No. 22-UI-210782 Exhibit 1 at 2.

(2) On June 30, 2022, the Department mailed decision # 164919 to claimant's address on file with the Department. Decision # 164919 stated, "If you disagree with the amount of the overpayment, you have the right to appeal this decision. Any appeal from this decision must be filed on or before July 20, 2022 to be timely." Order No. 22-UI-210786 Exhibit 1 at 2.

(3) On February 22, 2022, decision # 65647 became final without claimant having filed a request for hearing. On July 20, 2022, decision # 164919 became final without claimant having filed a request for hearing. On September 8, 2022, claimant filed late requests for hearing on decisions # 65647 and 164919.

(4) Order No. 22-UI-210782, mailed to claimant on December 22, 2022, stated, "You may appeal this decision by filing the attached form Application for Review with the Employment Appeals Board within 20 days of the date that this decision is mailed." Order No. 22-UI-210782 at 2. Order No. 22-UI-210782 also stated on its Certificate of Mailing, "Any party may appeal this Order by filing a Request for Review with the Employment Appeals Board no later than January 11, 2023."

(5) Order No. 22-UI-210786, mailed to claimant on December 22, 2022, stated, "You may appeal this decision by filing the attached form Application for Review with the Employment Appeals Board within 20 days of the date that this decision is mailed." Order No. 22-UI-210786 at 2. Order No. 22-UI-210786 also stated on its Certificate of Mailing, "Any party may appeal this Order by filing a Request for Review with the Employment Appeals Board no later than January 11, 2023."

(6) On or around December 23, 2022, claimant suffered a head injury that caused a concussion and post-concussion syndrome. The concussion "slowed [claimant's] cognitive function tremendously which makes reading and writing nearly impossible" for them. EAB Exhibit 1 at 4. As a result of the concussion, claimant was unable to read or write for longer than ten minutes and "generally require[d] assistance" to complete such tasks. EAB Exhibit 1 at 1.

(7) On January 11, 2023, Orders No. 22-UI-210782 and 22-UI-210786 became final without claimant having filed applications for review. On February 1, 2023, claimant submitted the applications for review to EAB via fax.

**CONCLUSIONS AND REASONS:** Claimant had good cause to file the late applications for review. Orders No. 22-UI-210782 and 22-UI-210786 are reversed, and these matters remanded for hearings on whether claimant had good cause to file the late requests for hearing on decisions # 65647 and 164919 and, if so, the merits of those decisions.

**Late application for review.** An application for review is timely if it is filed within 20 days of the date that the Office of Administrative Hearings (OAH) mailed the order for which review is sought. ORS

657.270(6); OAR 471-041-0070(1) (May 13, 2019). The 20-day filing period may be extended a “reasonable time” upon a showing of “good cause.” ORS 657.875; OAR 471-041-0070(2). “Good cause” means that factors or circumstances beyond the applicant’s reasonable control prevented timely filing. OAR 471-041-0070(2)(a). A “reasonable time” is seven days after the circumstances that prevented the timely filing ceased to exist. OAR 471-041-0070(2)(b). A late application for review will be dismissed unless it includes a written statement describing the circumstances that prevented a timely filing. OAR 471-041-0070(3).

The applications for review on Orders No. 22-UI-210782 and 22-UI-210786 were due by January 11, 2023. Because claimant did not file their applications for review until February 1, 2023, the applications for review were late. In a statement enclosed with their applications for review, claimant explained that they “[had] not been timely on responding due to unforeseen medical issues.” EAB Exhibit 1 at 2. Claimant appears to have been referring to their head injury and resultant concussion, which significantly impacted their ability to read and write without assistance. Overall, claimant’s statements on and enclosed with the applications for review suggest that their injury and resulting cognitive impairments caused them to be unable to file timely applications for review due to factors or circumstances beyond their reasonable control.

While it is not clear from the record why claimant was finally able to file the applications for review on February 1, 2023, it is reasonable to infer from the record that their injury and impairment prevented them from completing and submitting the applications for review until then. Therefore, the circumstances which prevented claimant from filing timely applications for review ceased on the day that they filed the applications for review, which was within seven days and therefore a “reasonable time.” As such, claimant had good cause to file the late applications for review. Claimant’s late applications for review on Orders No. 22-UI-210782 and 22-UI-210786 are therefore allowed.

**Late request for hearing.** 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. Under OAR 471-040-0010(1)(b)(A), “good cause” does not include failure to receive a document due to not notifying the Employment Department or Office of Administrative Hearings of an updated address while the person is claiming benefits or if the person knows, or reasonably should know, of a pending appeal.

The requests for hearing on decisions # 65647 and 164919 were due by February 22, 2022 and July 20, 2022, respectively. Because claimant did not file requests for hearing on either decision until September 8, 2022, the requests were late. On their appellant questionnaire response, claimant stated that they first received “the administrative decision” on September 7, 2022. EAB Exhibit 1 at 3. Claimant further explained that when they responded to a voicemail left by the Department, they “found out about this matter but the wrong address was on file” and they weren’t “aware [of these matters] until [their] address was changed.” EAB Exhibit 1 at 4. If claimant did not receive one or both of the administrative decisions until after their respective timely appeal deadlines had passed, claimant may have failed to file timely requests for hearing due to factors beyond their control. However, further information is needed

to determine whether claimant had good cause to file the late requests for hearing on either or both of the administrative decisions.

First, it is not clear when claimant became aware of the administrative decisions or their right to appeal the decisions. Claimant's statement on their appellant questionnaire response suggests that they became aware of one or both of the administrative decisions when they responded to a voicemail left for them by a Department representative. On remand, the ALJ should inquire as to the date of that communication and what the Department representative told claimant regarding the administrative decisions or their appeal rights.

Next, the schedule of adjustments enclosed with decision # 164919 shows that claimant last claimed benefits at least as recently as January 3, 2022.<sup>1</sup> It is not clear from the record whether claimant was claiming benefits, or otherwise had reason to know of a pending appeal, at the time that either of the administrative decisions were issued. On remand, the ALJ should develop the record in that regard. The ALJ should also inquire as to when claimant moved and when they changed their address with the Department.

Orders No. 22-UI-210782 and 22-UI-210786 therefore are reversed, and these matters remanded for hearings on whether claimant's late requests for hearing should be allowed and, if so, the merits of decisions # 65647 and 164919.

**DECISION:** Orders No. 22-UI-210782 and 22-UI-210786 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:** March 9, 2023

**NOTE:** The failure of any party to appear at the hearings on remand will not reinstate Orders No. 22-UI-210782 and 22-UI-210786 or return these matters to EAB. Only timely application for review of the subsequent orders will cause these matters to return to EAB.

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<sup>1</sup> See 22-UI-210786 Exhibit 1 at 3.



# 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.

**Employment Appeals Board - 875 Union Street NE | Salem, OR 97311**  
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