

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0174**

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

**PROCEDURAL HISTORY:** On September 29, 2020, 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 March 29, 2020 (decision # 91545). On October 19, 2020, decision # 91545 became final without claimant having filed a request for hearing. On November 28, 2022, claimant filed a late request for hearing. On January 11, 2023, ALJ Clemons conducted a hearing, and on January 19, 2023, issued Order No. 23-UI-213139, dismissing claimant's request for hearing as late without good cause and leaving decision # 91545 undisturbed. On February 3, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant's argument 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. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant's argument to the extent it was based on the record.

The parties may offer new information such as the information contained in claimant's written argument into evidence at the remand hearing. At that time, it will be determined if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing regarding documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties in advance of the hearing at their addresses as shown on the certificate of mailing for the notice of hearing.

**FINDINGS OF FACT:** (1) On April 6, 2020, claimant filed an initial claim for unemployment insurance benefits. Thereafter, claimant claimed and was paid benefits from mid-April 2020 through the beginning of September 2020.

(2) After claimant stopped claiming benefits, on September 29, 2020, the Department mailed decision # 91545 to claimant's address on file with the Department. Decision # 91545 concluded that claimant had voluntarily quit work without good cause and was disqualified from receiving benefits effective March 29, 2020. Exhibit 1 at 1. Decision # 91545 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 October 19, 2020." Exhibit 1 at 2.

(3) Claimant did not receive decision # 91545.

(4) On November 2, 2022, claimant received a billing statement from the Department seeking repayment of a \$22,608 overpayment of benefits.

(5) On November 14, 2022, claimant visited one of the Department's offices and spoke to two Department representatives about the billing statement. The representatives gave claimant a copy of the administrative decision that had created the overpayment.

(6) On November 28, 2022, claimant called the Department. A Department representative told claimant about decision # 91545. The representative also told claimant how to use the Department's online form to request a hearing. That day, claimant requested a hearing on decision # 91545 via the online form.

**CONCLUSIONS AND REASONS:** Order No. 23-UI-213139 is reversed, claimant's late request for hearing is allowed, and a hearing on the merits of decision # 91545 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 September 29, 2020, the Department mailed decision # 91545 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 October 19, 2020. Claimant did not file a request for hearing on decision # 91545 until November 28, 2022. Accordingly, claimant's request for hearing was late.

The order under review dismissed claimant's late request for hearing because, it concluded, claimant failed to establish good cause to extend the filing deadline to November 28, 2022. Order No. 23-UI-213139 at 3. The record does not support this conclusion.

A factor beyond claimant's reasonable control prevented him from filing by the October 19, 2020 deadline because claimant was not aware of decision # 91545 and his right to appeal the decision until November 28, 2022. At hearing, claimant testified that he did not remember receiving decision # 91545. Transcript at 5. The record also shows that claimant filed his request for hearing on decision # 91545 on the same day he learned of it, November 28, 2022. Given that claimant filed his appeal as soon as he learned of the decision's existence, it is reasonable to conclude he would have promptly done so had he received the decision in the mail in the first place. That claimant took no action to appeal decision #

91545 until he learned of it in November 2022 combined with his lack of memory of ever having received the decision is sufficient to conclude, more likely than not, that claimant did not receive the administrative decision in the mail. Further, after failing to receive it in the mail, claimant had no indication of the existence of decision # 91545 because the decision did not interfere with claimant receiving benefits because he had received payments and stopped claiming before the decision was issued. From there, on November 2, 2022, claimant received a Department billing statement seeking repayment of an overpayment of benefits of \$22,608. However, the overpayment billing statement was not sufficient to notify claimant of the existence of decision # 91545 or his right to appeal that decision, given that the billing statement related to an overpayment created by a different administrative decision, not decision # 91545.

Then, on November 14, 2022, claimant visited an office of the Department and spoke to two Department representatives about the billing statement. At hearing, the witness for the Department testified that Department records indicated that the representatives gave claimant a copy of *either* the overpayment decision underlying the billing statement *or* decision # 91545, but the records did not state which. Transcript at 14-15. Claimant testified that during this meeting he “assum[ed]” that the representative “got me something that confirmed why the billing statement said what it did” and that they “explained . . . it to me [in] very clear terms, that I was gonna have to pay back \$22,000[.]” Transcript at 21, 23. Based on this testimony, more likely than not, claimant received the overpayment administrative decision on November 14, 2022, not decision # 91545. The record fails to show that the overpayment decision contained information regarding the existence of decision # 91545 or claimant’s right to appeal decision # 91545. Further, the Department’s representative testified that based on their understanding of the Department’s records, claimant would not have been meaningfully informed of his right to appeal decision # 91545 on November 14, 2022. The Department’s representative testified that claimant would not have known how to file an appeal on decision # 91545 until November 28 2022. Transcript 26-27.

Therefore, it is more likely than not the factor beyond claimant’s reasonable control that prevented him from appealing decision # 91545 continued until November 28, 2022. On that date, claimant contacted the Department again. A Department representative told claimant about decision # 91545. The representative also told claimant how to use the Department’s online form to request a hearing. On the same day, claimant filed a request for hearing on decision # 91545. 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 on decision # 91545 to November 28, 2022.

Claimant’s late request for hearing is therefore allowed, and claimant is entitled to a hearing on the merits of decision # 91545.

**DECISION:** Order No. 23-UI-213139 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:** March 16, 2023

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-213139 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**

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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