

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0203**

*Late Application for Review Allowed*  
*Reversed & Remanded*

**PROCEDURAL HISTORY:** On December 27, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant failed to provide information in accordance with the Department's rules and was not eligible for benefits from May 30, 2021 through September 4, 2021 (weeks 22-21 to 35-21) and until the reason for the denial had ended (decision # 566718). On January 18, 2022, decision # 566718 became final without claimant having filed a request for hearing. On June 22, 2022, claimant filed a late request for hearing. ALJ Kangas considered the request, and on October 4, 2022 issued Order No. 22-UI-204121, dismissing the request as late subject to claimant's right to renew the request by responding to an appellant questionnaire by October 18, 2022. On October 24, 2022, Order No. 22-UI-204121 became final without claimant having filed a response to the appellant questionnaire or an application for review with the Employment Appeals Board (EAB). On February 10, 2023, claimant filed a late application for review of Order No. 22-UI-204121 with EAB.

**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 late application for review and relevant portions of the copy of Order No. 22-UI-204121 OAH mailed to claimant showing that it was returned as undeliverable, 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 December 27, 2021, decision # 566718 was mailed to claimant's address of record on file with the Department. It 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 January 18, 2022." Exhibit 1 at 2.

(2) On June 22, 2022, claimant filed their late request for hearing on decision # 566718. With their late request for hearing, claimant notified the Office of Administrative Hearings (OAH) of their current mailing address, which was different than the address OAH had on file at that time. Exhibit 2 at 2.

(3) On October 4, 2022, OAH mailed Order No. 22-UI-204121 to claimant's previous address rather than the address they provided with their June 22, 2022 late request for hearing. EAB Exhibit 1 at 3. Order No. 22-UI-204121 was subsequently returned by the Postal Service as undeliverable. EAB Exhibit 1 at 4. Order No. 22-UI-204121 stated, "Any party may appeal this order by filing a Request for Review with the Employment Appeals Board no later than October 24, 2022." Order No. 22-UI-204121 at 1.

(4) On February 10, 2023, claimant filed their late application for review of Order No. 22-UI-204121.

**CONCLUSIONS AND REASONS:** Claimant's late application for review of Order No. 22-UI-204121 is allowed. Order No. 22-UI-204121 is set aside and this matter remanded for a hearing on whether claimant's late request for hearing on decision # 566718 should be allowed and, if so, the merits of that decision.

**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 application for review of Order No. 22-UI-204121 was due by October 24, 2022. Because claimant did not file their application for review until February 10, 2023, the application for review was late. However, it appears claimant did not receive Order No. 22-UI-204121 because OAH did not mail it to the address claimant provided on their late request for hearing referral form, a circumstance beyond claimant's reasonable control that prevented them from filing a timely application for review. EAB Exhibit 1 at 3-4. The statement claimant provided with their late application for review shows that claimant likely never received a copy of Order No. 22-UI-204121, and was still unaware of their right to appeal the order and the deadline for doing so. EAB Exhibit 1 at 1. The circumstances that prevented a timely appeal therefore continued to exist at the time claimant filed their application for review, which therefore was filed within a "reasonable time." Accordingly, claimant has demonstrated good cause to extend the filing deadline to February 10, 2023, and their late application for review is 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.

The deadline to file a timely request for hearing on decision # 566718 was January 18, 2022. Claimant filed their request for hearing on June 22, 2022. Therefore, the request for hearing was late. However, due to OAH's error in mailing Order No. 22-UI-2014121 to the wrong address, claimant has not been afforded the opportunity to respond to the appellant questionnaire to fully explain why their request for hearing was filed late. The record suggests that claimant suffered from several mental health impairments, and was homeless and had difficulty with access to mail delivery and phone service while they were claiming benefits. EAB Exhibit 1 at 1. These factors may have continued to affect claimant at the time that decision # 566718 was issued. Claimant therefore may have been delayed in filing their request for hearing due to circumstances beyond their reasonable control or an excusable mistake. The record is in need of further development as to when claimant learned of decision # 566718 and their appeal rights, what may have prevented them from filing a timely request for hearing, and when any factors that prevented a timely filing ceased to exist.

Order No. 22-UI-204121 therefore is set aside, and this matter remanded for a hearing on whether the late request for hearing on decision # 566718 should be allowed and, if so, the merits of that decision.

**DECISION:** Claimant's late application for review is allowed. Order No. 22-UI-204121 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 20, 2023

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-204121 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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