

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0261**

*Affirmed*  
*Late Request for Hearing Dismissed*

**PROCEDURAL HISTORY:** On April 27, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing a \$5,318.00 overpayment of regular unemployment insurance (regular UI) benefits, a \$9,300 overpayment of Federal Pandemic Unemployment Compensation (FPUC) benefits, a \$1,800 overpayment of Lost Wages Assistance (LWA) benefits, a \$4,385.40 monetary penalty, and a 52-week penalty disqualification from future benefits. On May 17, 2022, the April 27, 2022 administrative decision became final without claimant having requested a hearing. On May 24, 2022, claimant filed a late request for hearing on the April 27, 2022 administrative decision. ALJ Kangas considered claimant's request, and on August 31, 2022 issued Order No. 22-UI-201844, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by September 14, 2022. On September 15, 2022, claimant filed a late response to the appellant questionnaire and a timely application for review with the Employment Appeals Board (EAB). On February 23, 2023, ALJ Kangas mailed a letter to claimant stating that because claimant's response to the appellant questionnaire was late, it would not be considered, another order would not be issued, and Order No. 22-UI-201844 remained in effect. This matter comes before EAB based upon claimant's September 15, 2022 application for review of Order No. 22-UI-201844.

**EVIDENTIARY MATTER:** EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is the appellant questionnaire response claimant included with their 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 April 27, 2022, the Department mailed the April 27, 2022 administrative decision to claimant's address of record. Claimant did not receive this copy of the decision in the mail. EAB Exhibit 1 at 1.

(2) On May 9, 2022, claimant received a copy of the April 27, 2022 administrative decision from their employer. EAB Exhibit 1 at 1. The decision stated, “Any appeal from this decision must be filed on or before May 17, 2022 to be timely.” Exhibit 1 at 1. Claimant “started writing” their request for hearing that day, but became ill and was “not able to get [their] appeal request completed until May 17, 2022.” EAB Exhibit 1 at 1.

(3) The April 27, 2022 administrative decision became final on May 17, 2022 without claimant having filed a request for hearing.

(4) On May 18, 2022, claimant mailed their late request for hearing. EAB Exhibit 1 at 1. It was postmarked May 24, 2022. Exhibit 2 at 3.

**CONCLUSIONS AND REASONS:** Claimant’s late request for hearing is dismissed.

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 the April 27, 2022 administrative decision was May 17, 2022. The filing date for a request for hearing filed by mail is the postmarked date affixed by the United States Postal Service or, in the absence of a postmarked date, the most probable date of mailing. OAR 471-040-0005(4)(b) (July 15, 2018). The postmark date on the envelope in which claimant mailed their request for hearing was May 24, 2022; that date is therefore the filing date. Accordingly, the request for hearing was late. Claimant stated they mailed their request for hearing on May 18, 2022, despite the May 24, 2022 postmark. EAB Exhibit 1 at 1. Because this occurred on May 18, 2022, which was after the deadline of May 17, 2022, the appeal would have been late even if it had been postmarked the same day claimant placed it in the mail.

Claimant received a copy of the April 27, 2022 administrative decision, which included claimant’s appeal rights, from their employer on May 9, 2022. The fact that claimant failed to receive their own copy of the decision, which was mailed to claimant’s address of record, did not prevent claimant from timely filing a request for hearing because claimant was aware of the decision and their appeal rights more than a week before the deadline for timely filing.

Though claimant contended they were “not able to get [their] appeal request completed until May 17, 2022” due to illness, they offered no explanation as to why they did not file it the day it was completed, which was also the deadline for timely filing. EAB Exhibit 1 at 1. Even if claimant was previously delayed in filing due to illness, they still had the opportunity to timely file the request for hearing once that circumstance ceased to exist on May 17, 2022, and claimant has not shown that factors beyond their reasonable control or an excusable mistake prevented them from timely filing their request that day. Accordingly, claimant has not shown good cause to extend the deadline for timely filing and their late request for hearing is dismissed.

**DECISION:** Order No. 22-UI-201844 is affirmed.

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

**DATE of Service:** March 9, 2023

**NOTE:** You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at [courts.oregon.gov](https://courts.oregon.gov). Once on the website, use the ‘search’ function to search for ‘petition for judicial review employment appeals board’. A link to the forms and information will be among the search results.

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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.

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