

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0274**

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

**PROCEDURAL HISTORY:** On February 18, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work for the weeks including March 29, 2020 through August 8, 2020 (weeks 14-20 through 32-20) and was denied benefits for those weeks and until the reason for the denial had ended (decision # 114732). On March 10, 2021, decision # 114732 became final without claimant having filed a request for hearing. On August 15, 2022, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on January 23, 2023 issued Order No. 23-UI-213419, dismissing claimant's request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by February 6, 2023. On February 13, 2023, Order No. 23-UI-213419 became final without claimant having filed a response to the appellant questionnaire or an application for review with the Employment Appeals Board (EAB). On March 1, 2023, claimant filed a late response to the appellant questionnaire and a late application for review with EAB. This matter comes before EAB based on claimant's late application for review of Order No. 23-UI-213419.

**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 February 18, 2021, the Department mailed decision # 114732 to claimant's address of record on file with the Department.

(2) On June 21, 2022 the Department served notice of an administrative decision concluding that claimant had been overpaid benefits, based in part on decision # 114732. Claimant did not receive and was not aware of that overpayment administrative decision until August 2, 2022.

(3) On August 15, 2022, claimant filed a request for hearing on the overpayment administrative decision, which the Department also considered a late request for hearing on decision # 114732.

(4) On January 23, 2023, the Department mailed Order No. 23-UI-213419 to claimant's address of record on file with OAH. Its Certificate of Mailing stated, "Any party may appeal this Order by filing a Request for Review with the Employment Appeals Board no later than February 13, 2023."

(5) On February 24, 2023, claimant received Order No. 23-UI-213419. Its receipt was delayed because it had been delivered to another family living at claimant's address.

(6) On March 1, 2023, claimant filed a response to the appellant questionnaire and an application for review of Order No. 23-UI-213419.

**CONCLUSION AND REASONS:** Claimant's late application for review is allowed. Order No. 23-UI-213419 is set aside, and the matter remanded for a hearing to determine if claimant had good cause to file their late request for hearing on decision # 114732, 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. 23-UI-213419 was due February 6, 2022. Because claimant did not file their application for review until March 1, 2023, the application for review was late. Claimant provided a written statement with the application for review. In it, claimant explained that their address is shared with another family, and the order under review was delivered to the other family, delaying claimant's receipt of it until February 24, 2023. EAB Exhibit 1 at 2. This constituted a circumstance beyond claimant's reasonable control that prevented timely filing of their application for review. This circumstance ceased on February 24, 2023, when claimant received the order under review. As the application for review was filed within seven days of February 24, 2023, it was filed within a "reasonable time." Therefore, good cause exists to extend the filing period to March 1, 2023, and claimant's 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.

On February 18, 2021, the Department mailed decision # 114732 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 March 10, 2021. Claimant did not file a request for hearing on decision # 114732 until August 15, 2022. Therefore, claimant's request was late.

Claimant's response to the appellant questionnaire only addressed why they filed their request for hearing on the overpayment administrative decision late, and did not mention decision # 114732. EAB Exhibit 1 at 1-2. As claimant described circumstances that delayed her receipt of the overpayment administrative decision, it is possible that claimant's receipt of decision # 114732 was also delayed, or that claimant did not receive decision # 114732 at all. Further development of the record is therefore needed to determine when, if ever, claimant received or became aware of the existence of decision # 114732 and their appeal rights therefrom, and the specific reason their request for hearing on decision # 114732 was late. If good cause is found to allow claimant's late request for hearing, a hearing on the merits of decision # 114732 is required.

**DECISION:** Order No. 23-UI-213419 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:** April 3, 2023

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-213419 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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