

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0281**

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

**PROCEDURAL HISTORY:** On March 26, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause and was disqualified from receiving unemployment insurance benefits effective October 18, 2020 (decision # 105001). On April 15, 2021, decision # 105001 became final without claimant filing a request for hearing. On May 21, 2021, claimant filed a late request for hearing. ALJ Kangas considered the request, and on June 18, 2021 issued Order No. 21-UI-169025, dismissing the request as late, subject to claimant's right to renew the request by responding to the appellant questionnaire by July 2, 2021. On June 24, 2021, claimant responded to the appellant questionnaire. On September 9, 2021, the Office of Administrative Hearings (OAH) mailed a letter cancelling and vacating Order No. 21-UI-169025, and stating that a hearing would be held on whether claimant's late request for hearing should be allowed and, if so, the merits of decision # 105001. On February 16, 2023, ALJ D. Lee conducted a hearing at which the employer did not appear, the Department did not appear but did submit an attestation, and on February 24, 2023 issued Order No. 23-UI-217183, dismissing claimant's request for hearing as late without good cause, leaving decision # 105001 undisturbed. On March 3, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) On March 26, 2021, the Department mailed decision # 105001 to claimant's address on file with the Department. Decision # 105001 stated, "You have the right to appeal this decision if you do not believe it is correct. You request for appeal must be received no later than April 15, 2021." DR Exhibit 1 at 2.

(2) On or about March 28, 2021, claimant received decision # 105001 in the mail and disagreed with it.

(3) On March 31, 2021, claimant filed an initial a request for hearing using the Department's online "contact us" form. After submitting his request, he was prompted to create a user profile, which he did. He then received an email from the Department confirming the profile creation. The Department did not have a record of receiving this request.

(4) On May 21, 2021, claimant submitted an inquiry regarding the status of his earlier request for hearing using the “contact us” form on the Department’s website. The Department received this inquiry and considered it a late request for hearing on decision # 105011.

**CONCLUSION AND REASONS:** Order No. 23-UI-217183 is reversed and this matter remanded for a hearing on the merits decision # 105001.

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 order under review concluded that claimant’s request for hearing was filed late without good cause because claimant’s belief that he submitted an earlier request for hearing on March 31, 2021 that was not received by the Department did not constitute an excusable mistake or factor beyond his reasonable control. Order 23-UI-217183 at 2. The record does not support this conclusion.

The parties disagreed about the date that claimant filed his initial request for hearing. According to claimant, he filed an initial request for hearing on March 31, 2021. Audio Record at 8:34 to 8:39 Claimant testified that on that day, he logged into the Department’s website and submitted his request for hearing. Audio Record at 8:41 to 8:45. After submitting this request, he was prompted to create a user profile. He immediately created this profile and received a confirmation email regarding the new profile. The Department’s attestation stated, “claimant requested a hearing on May 21, 2021.” Department’s Attestation at 2.<sup>1</sup> It further stated, “There is no record that the claimant contacted the Department during the appeal period.” Department’s Attestation at 2.

After receiving no response from the Department regarding his request, claimant submitted a second inquiry regarding the status of his request for hearing on May 21, 2021. Claimant’s account of when he submitted his initial request for hearing on March 31, 2021 is afforded more weight. Because the Department submitted an attestation instead of appearing at the hearing, claimant was denied any opportunity to cross examine the Department’s witness, including inquiring into possible reasons for the Department not receiving claimant’s March 31, 2021 request for hearing. Claimant’s first hand testimony that he successfully filed his request for hearing on March 31, 2021 is consistent with and supported by his May 21, 2021 inquiry to the Department following up on and referring to the earlier submission. DR Exhibit 2 at 2. Therefore, more likely than not, claimant filed his request for hearing on March 31, 2021, before the appeal deadline. For these reasons, claimant’s request for hearing is allowed, and claimant is entitled to a hearing on the merits of decision # 105001.

**DECISION:** Order No. 23-UI-217183 is set aside, and this matter remanded for further proceedings consistent with this order.

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<sup>1</sup> Though it was not assigned an exhibit number, the Department’s attestation was admitted into the record as an exhibit. Audio Record at 4:10.

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

**DATE of Service: April 4, 2023**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-217183 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.

**Employment Appeals Board - 875 Union Street NE | Salem, OR 97311**  
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711  
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