

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0339**

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

**PROCEDURAL HISTORY:** On July 8, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and therefore was disqualified from receiving unemployment insurance benefits effective January 10, 2021 (decision # 132622). On July 28, 2021, decision # 132622 became final without claimant having filed a request for hearing. On August 26, 2021, claimant filed a late request for hearing on decision # 132622. ALJ Kangas considered claimant's request, and on September 8, 2021 issued Order No. 21-UI-174278, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by September 22, 2021. On September 22, 2021, claimant filed a timely response to the appellant questionnaire. On March 7, 2022, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 21-UI-174278 was vacated and that a new hearing would be scheduled to determine whether claimant had good cause to file the late request for hearing and, if so, the merits of decision # 132622. On March 9, 2023, ALJ Enyinnaya conducted a hearing, and on March 15, 2023 issued Order No. 23-UI-219100, concluding that claimant did not have good cause to file the late request for hearing and leaving decision # 132622 undisturbed. On March 21, 2023, claimant filed an application for review of Order No. 23-UI-219100 with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant filed written arguments on March 21, 2023 and March 28, 2023. Claimant did not declare that he provided copies of either argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The arguments also contained information that was not part of the hearing record, and claimant did not show that the additional information was relevant and material to EAB's determination as required by OAR 471-041-0090(1)(b)(A) (May 13, 2019). With the exception of the noticed fact, below, EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

The parties may offer new information, such as the information contained in claimant's written arguments, 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 July 8, 2021, the Department mailed decision # 132622 to claimant's address on file with the Department. Decision # 132622 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 July 28, 2021." Exhibit 2 at 5.

(2) Claimant never received a copy of decision # 132622.

(3) On July 26, 2021, the Department issued another administrative decision that denied claimant benefits for reasons unrelated to decision # 132622.

(4) On August 26, 2021, claimant called the Department to inquire about the administrative decision issued on July 26, 2021. During or after that call, the Department representative who spoke to claimant entered the following comment into claimant's file:

PTC CLMT INQ ABOUT IMS DENIAL; LET CLMT KNOW CLAIM WAS DENIED DUE TO DS; CLMT WANTS TO APPEAL DS DENIAL DECISION; XFRD TO TIER 2 TO FILE FOR APPEAL.<sup>1</sup>

(5) On August 26, 2021, claimant filed a late request for hearing on decision # 132622.

**CONCLUSIONS AND REASONS:** Order No. 23-UI-219100 is reversed and this matter remanded for a hearing on the merits of decision # 132622.

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 request for hearing on decision # 132622 was due by July 28, 2021. Because claimant did not file his request for hearing until August 26, 2021, the request was late. The record shows that claimant's

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<sup>1</sup> EAB has taken notice of these facts, which are contained in Employment Department records. OAR 471-041-0090(1). These facts are necessary to complete the record under OAR 471-041-0090(1)(a). Any party that objects to our taking notice of this information 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 noticed fact will remain in the record.

failure to file a timely request for hearing was the result of his having never received decision # 132622, which constituted a factor beyond claimant's reasonable control. The order under review acknowledged this, but nevertheless concluded that claimant did not have good cause to file the late request for hearing because "[n]o evidence was provided to show why claimant contacted the Department on August 26, 2021 or when claimant became aware of the administrative decision." Order No. 23-UI-219100 at 3. The record does not support this conclusion.

At hearing, the Department's witness testified that the Department had "a note on August 26, 2021, saying that the Claimant called and inquired . . . and an appeal was filed at his request." Transcript at 5. The Department's witness did not offer the full contents of that note, however, or otherwise explain the context in which the related call took place. Per that comment in claimant's file, claimant contacted the Department on August 26, 2021 because he had received a different administrative decision that had been issued a month prior. During that call, the Department representative "let [claimant] know [that his] claim was denied due to [a discharge from work]," and claimant subsequently expressed a desire to appeal that denial.

Given that decision # 132622, which disqualified claimant from benefits due to a discharge from work, was issued less than two months prior to that call, it is reasonable to infer that the Department representative was referring to decision # 132622. Further, given that claimant did not receive a copy of decision # 132622 and that he expressed a desire to appeal the decision during the call on August 26, 2021, it is reasonable to infer that claimant first became aware of decision # 132622 during that call. Therefore, the factor which prevented claimant from filing a timely request for hearing ceased on August 26, 2021. Because claimant filed the request for hearing on the same day as the day on which the factor ceased, claimant filed the request within a reasonable time.

For the above reasons, claimant had good cause for failing to file a timely request for hearing, and filed his late request for hearing within a reasonable time. Claimant's late request for hearing on decision # 132622 therefore is allowed, and claimant is entitled to a hearing on the merits of decision # 132622.

**DECISION:** Order No. 23-UI-219100 is set aside, as outlined above.

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

**DATE of Service:** May 1, 2023

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-219100 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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