

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0409**

*Late Applications for Review Allowed*  
*Affirmed*  
*Requests to Reopen Denied*

**PROCEDURAL HISTORY:** On August 16, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not able to work from December 19, 2021 through June 18, 2022 (weeks 51-21 through 24-22) and was ineligible for benefits for those weeks and until the reason for the denial had ended (decision # 75942). On August 23, 2022, the Department served notice of an administrative decision concluding that claimant was not available for work and did not actively seek work during weeks 51-21 through 24-22 and was ineligible for benefits for those weeks and until the reason for the denial had ended (decision # 102318). Claimant filed timely requests for hearing. On September 1, 2022, the Office of Administrative Hearings (OAH) served notice of hearings scheduled for September 19, 2022. On September 19, 2022, claimant failed to appear at the hearings, and ALJ Scott issued Orders No. 22-UI-202992 and 22-UI-202974, dismissing claimant's requests for hearing due to claimant's failure to appear.

On September 21, 2022, claimant filed timely requests to reopen the September 19, 2022 hearings. ALJ Kangas considered the requests, and on February 21, 2023 issued Orders No. 23-UI-216647 and 23-UI-216646, denying the requests and leaving Orders No. 22-UI-202992 and 22-UI-202974 undisturbed. On March 13, 2023, Orders No. 23-UI-216647 and 23-UI-216646 became final without claimant having filed applications for review with the Employment Appeals Board (EAB). On April 5, 2023, claimant filed late applications for review of Orders No. 23-UI-216647 and 23-UI-216646 with EAB.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-216647 and 23-UI-216646. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2023-EAB-0410 and 2023-EAB-0409).

**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 written statement claimant provided with their late applications 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.

**WRITTEN ARGUMENT:** EAB did not consider claimant’s written argument when reaching this decision as to the review of Order No. 23-UI-216647, because claimant did not include a statement declaring that they sent a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). However, EAB considered claimant’s argument as to the review of Order No. 23-UI-216646.

**FINDINGS OF FACT:** (1) Order No. 23-UI-216647, mailed to claimant on February 21, 2023, stated, “You may appeal this decision by filing the attached form Application for Review with the Employment Appeals Board within 20 days of the date that this decision is mailed.” Order No. 23-UI-216647 at 3. Order No. 23-UI-216647 also stated on its Certificate of Mailing, “Any appeal from this Order must be filed on or before March 13, 2023 to be timely.”

(2) Order No. 23-UI-216646, mailed to claimant on February 21, 2023, stated, “You may appeal this decision by filing the attached form Application for Review with the Employment Appeals Board within 20 days of the date that this decision is mailed.” Order No. 23-UI-216646 at 3. Order No. 23-UI-216646 also stated on its Certificate of Mailing, “Any appeal from this Order must be filed on or before March 13, 2023 to be timely.”

(3) Claimant timely received Orders No. 23-UI-216647 and 23-UI-216646.

(4) On March 3, 2023, claimant mailed timely applications for review of Orders No. 23-UI-216647 and 23-UI-216646 to EAB. EAB did not receive these applications for review. EAB Exhibit 1 at 1.

(5) On April 5, 2023, upon learning that their applications for review had not been received by EAB, claimant filed late applications for review of Orders No. 23-UI-216647 and 23-UI-216646 by email. EAB Exhibit 1 at 1.

**CONCLUSION AND REASONS:** Claimant’s late applications for review are allowed.

**Late applications 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 applications for review of Orders No. 23-UI-216647 and 23-UI-216646 were due March 13, 2023. Because claimant did not file their applications for review until April 5, 2023, the applications for review were late.

Claimant provided a written statement with the applications for review asserting that on March 3, 2023, claimant timely mailed applications for review of Orders No. 23-UI-216647 and 23-UI-216646 to EAB. EAB did not receive these applications for review. The failure of EAB to receive the applications for review was a factor beyond claimant's reasonable control that prevented claimant from filing timely applications for review. The record does not show precisely when claimant learned that EAB had not received their mailed applications for review, which was when the factor that prevented timely filing ceased to exist. In the absence of evidence to the contrary, it is reasonable to infer that claimant learned this information no earlier than seven days prior to April 5, 2023, when claimant filed their late applications for review of Orders No. 23-UI-216647 and 23-UI-216646 by email. Accordingly, claimant has shown good cause to extend the deadline for timely filing a "reasonable time" to April 5, 2023, and claimant's late applications for review are allowed.

**Requests to reopen.** EAB reviewed the entire consolidated hearing record. On *de novo* review and pursuant to ORS 657.275(2), the orders under review are **adopted**.

**DECISION:** Orders No. 23-UI-216647 and 23-UI-216646 are affirmed.

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

**DATE of Service:** May 11, 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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