

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0438**

*Late Application for Review Allowed*  
*Order No. 22-UI-205991 Reversed*  
*Order No. 22-UI-204370 Reversed*  
*Late Request for Hearing Allowed*  
*Merits Hearing Required*

**PROCEDURAL HISTORY:** On January 13, 2021, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was not eligible to receive PUA benefits effective February 2, 2020. On February 2, 2021, the January 13, 2021 PUA administrative decision became final without claimant having filed a request for hearing. On July 5, 2022, claimant filed a late request for hearing on the January 13, 2021 PUA decision. ALJ Kangas considered claimant's request, and on October 5, 2022 issued Order No. 22-UI-204370, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by October 19, 2022. On October 24, 2022, claimant's copy of Order No. 22-UI-204370 was returned to the Office of Administrative Hearings (OAH) as undeliverable. On October 25, 2022, Order No. 22-UI-204370 became final without claimant having filed a response to the appellant questionnaire or an application for review with the Employment Appeals Board (EAB). On October 27, 2022, ALJ Kangas issued Order No. 22-UI-205991, amending Order No. 22-UI-204370 to correct claimant's address.<sup>1</sup>

On December 3, 2022, claimant filed a late response to the appellant questionnaire and a late application for review with EAB. On April 10, 2023, ALJ Kangas mailed a letter stating that OAH would not consider claimant's questionnaire response or issue another order regarding this matter because the questionnaire response was late. This matter comes before EAB based upon claimant's December 3, 2022 late application for review.

**EVIDENTIARY MATTER:** EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of claimant's response to the appellant questionnaire and statement enclosed with the application for review, and an email from

<sup>1</sup> Although Order No. 22-UI-205991 was issued to correct claimant's address, claimant's address on Order No. 22-UI-205991 remained unchanged from claimant's address on Order No. 22-UI-204370.

OAH to claimant, 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 January 13, 2021, the Department mailed the January 13, 2021 PUA administrative decision to claimant's address on file with the Department. The January 13, 2021 PUA decision stated, "You have the right to appeal this decision if you do not believe it is correct. Your request for appeal must be received by February 2, 2021." Exhibit 1 at 2.

(2) During the time period relevant to this decision, claimant was "homeless and couch surfing." EAB Exhibit 1 at 4. As a result, claimant was not able to regularly access their mail from "the addresses that [they were] using." EAB Exhibit 1 at 4. Claimant never received a copy of the January 13, 2021 PUA decision.

(3) In July 2022, claimant first learned that they had been denied PUA benefits. On July 5, 2022, claimant filed a late request for hearing on the January 13, 2021 PUA decision.

(4) Order No. 22-UI-204370, mailed to claimant on October 5, 2022, 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. 22-UI-204370 at 2. Order No. 22-UI-204370 also stated on its Certificate of Mailing, "Any party may appeal this Order by filing a Request for Review with the Employment Appeals Board no later than October 25, 2022."

(5) On October 25, 2022, an OAH hearings coordinator contacted claimant via email and provided claimant with a copy of Order No. 22-UI-204370 and an explanation of the applicable appeals procedures.

(6) Due to experiencing homelessness and their resulting inability to regularly check their mail or email, claimant did not receive a copy of Order No. 22-UI-204370 when it was originally mailed. Claimant did not receive or learn about Order No. 22-UI-204370 until December 3, 2022, when they were able to check their email and discovered the October 25, 2022 email that OAH had sent to them. Claimant filed their late application for review the same day.

**CONCLUSIONS AND REASONS:** The ALJ lacked jurisdiction to issue Order No. 22-UI-205991, and that order is therefore reversed. Claimant had good cause to file the late application for review on Order No. 22-UI-204370 and their late request for hearing, and is entitled to a hearing on the merits of the January 13, 2021 PUA decision.

**Issuance of Amended Order.** ORS 657.270(6) states, in relevant part, that the decision of an administrative law judge is final unless the Department or any other party to the hearing files an application for review with the Employment Appeals Board within 20 days after the delivery of the notice under ORS 657.270(4), or if mailed, within 20 days after the notice was mailed to the party's last-known address. OAR 471-040-0030(5) (August 1, 2004) states, in relevant part, that an administrative law judge may issue an amended decision prior to the previous decision becoming final.

The ALJ issued Order No. 22-UI-204370 on October 5, 2022. Claimant's copy of that order was returned to OAH as undeliverable on October 24, 2022. Order No. 22-UI-204370 became final on October 25, 2022 without claimant having filed an application for review with EAB. Nevertheless, the ALJ issued Order No. 22-UI-205991 on October 27, 2022 in an attempt to correct claimant's address as listed on the original order. Because the order that the ALJ sought to amend was already final, the ALJ lacked jurisdiction to issue Order No. 22-UI-205991 on October 27, 2022. Order No. 22-UI-205991 is therefore reversed, and claimant's December 3, 2022 application for review is construed to apply to Order No. 22-UI-204370, issued on October 5, 2022.

**Late application for review.** An application for review is timely if it is filed within 20 days of the date that 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. 22-UI-204370 was due by October 25, 2022. Because claimant did not file their application for review until December 3, 2022, the application for review was late. The record shows that claimant never received a copy of the order under review. It was returned to OAH as undeliverable. Therefore, claimant failed to file a timely application for review of Order No. 22-UI-204370 due to factors or circumstances beyond their reasonable control. These factors ceased on December 3, 2022 when claimant was able to check their email and discovered the October 25, 2022 email that OAH had sent to them, which included an explanation of appeals procedures. Claimant filed their late application for review the same day that the factors ceased. Therefore, claimant filed the late application for review within the seven-day "reasonable time" period under OAR 471-041-0070(2)(b). Claimant's late application for review of 22-UI-204370 is therefore 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.

The request for hearing on the January 13, 2021 PUA decision was due by February 2, 2021. Because claimant did not file their request for hearing until July 5, 2022, the request was late.

The record shows that claimant never received a copy of the January 13, 2021 PUA decision because claimant was experiencing homelessness and not able to regularly access mail, which constituted a factor beyond claimant's reasonable control that prevented them from filing a timely request for hearing. That factor did not cease until July 2022, when claimant first learned about the outcome of the PUA decision. It is not clear from the record on what date in July 2022 claimant learned about the outcome of the PUA decision. However, because claimant filed their late request for hearing on July 5, 2022,

claimant must have learned about the PUA decision sometime between July 1, 2022 and that date. Therefore, claimant filed their late request for hearing within the seven-day “reasonable time” period after the factor which prevented a timely filing ceased. Claimant’s late request for hearing on the January 13, 2021 PUA decision is therefore allowed, and claimant is entitled to a hearing on the merits of that decision.

**DECISION:** Orders No. 22-UI-204370 and 22-UI-205991 are set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service:** April 24, 2023

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-204370 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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