

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0453**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On March 16, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not actively seeking work during the weeks including February 27, 2022 through March 12, 2022 (weeks 09-22 through 10-22) and was therefore ineligible to receive unemployment insurance benefits during those weeks (decision # 134755). On April 5, 2022 decision # 134755 became final without claimant having filed a request for hearing. On July 7, 2022, the Department served notice of an administrative decision, based in part on decision # 134755, concluding that claimant received benefits to which they were not entitled and assessing an overpayment of \$1,466 in regular unemployment insurance benefits that claimant was required to repay to the Department (decision # 132715). On July 27, 2022, decision # 132715 became final without claimant having filed a request for hearing. On August 11, 2022 claimant filed a late request for hearing on decisions # 134755 and 132715.

ALJ Kangas considered claimant's request, and on November 17, 2022 issued Orders No. 22-UI-207556 and 22-UI-207568, dismissing claimant's request for hearing on decisions # 134755 and 132715 as late without a showing of good cause, subject to claimant's right to renew the request by responding to an appellant questionnaire by December 1, 2022. On December 6, 2022, claimant filed a late response to the appellant questionnaire and timely applications for review of Orders No. 22-UI-207556 and 22-UI-207568 with the Employment Appeals Board (EAB). On April 13, 2022, ALJ Kangas mailed claimant two letters stating that the Office of Administrative Hearings (OAH) would not consider claimant's questionnaire response or issue another decision regarding the matters because the questionnaire response was late. These matters come before EAB based on claimant's December 6, 2022 applications for review of Orders No. 22-UI-207556 and 22-UI-207568.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 22-UI-207556 and 22-UI-207568. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2023-EAB-0454 and 2023-EAB-0453).

**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 December 6, 2022 response to the appellant questionnaire, 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(s) will remain in the record.

**FINDINGS OF FACT:** (1) On March 16, 2022, the Department mailed decision # 134755 to claimant's address on file with the Department. Decision # 134755 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 April 5, 2022." Order No. 22-UI-207556 Exhibit 1 at 2.

(2) On July 7, 2022, the Department mailed decision # 132715 to claimant's address on file with the Department. Decision # 132715 stated, "[Y]ou have the right to appeal this decision. Any appeal from this decision must be filed on or before July 27, 2022 to be timely." Order No. 22-UI-207568 Exhibit 1 at 2.

(3) On August 11, 2022, claimant requested hearings on decisions # 134755 and # 132715.

**CONCLUSIONS AND REASONS:** Orders No. 22-UI-207556 and 22-UI-207568 are set aside and these matters are remanded for a hearing on whether claimant's late request for hearing on decisions # 134755 and 132715 should be allowed and, if so, the merits of those decisions.

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 March 16, 2022, the Department mailed decision #134755 to claimant at claimant's address on file with the Department. The 20-day deadline for claimant to file a timely request for hearing on that decision was April 5, 2022. Claimant did not file the request for hearing until August 11, 2022. Accordingly, claimant's request for hearing was late. Likewise, on July 7, 2022, the Department mailed decision # 132715 to claimant at claimant's address on file with the Department. The 20-day deadline on decision #132715 was July 27, 2022, but claimant did not file the request for hearing until August 11, 2022. Therefore, this request for hearing was also late.

In claimant's response to the appellant questionnaire, they indicate that "I didn't receive information I was filing my weekly employment wrong." EAB Exhibit 1 at 2. Based on this statement, it appears that claimant may have not received the administrative decisions. Additionally, the claimant's request for hearing also states, "Claimant did not know he had been denied." Exhibit 2 at 2. The statement further suggests that claimant may have not received the administrative decisions. If claimant did not receive the administrative decisions, claimant's late request for hearing may have been due to factors beyond their reasonable control or an excusable mistake.

However, further inquiry is needed to determine whether claimant had good cause to file the late request for hearings, and whether they filed the late request within a reasonable time. On remand, the ALJ

should develop the record to determine if claimant received decisions # 134755 and 132715 in the mail and, if so, when claimant received them. If claimant did not receive decisions # 134755 and 132715, the ALJ should ask questions to determine how and when claimant became aware of the decisions and their right to request appeals, as well as whether claimant's August 11, 2022 request for hearing occurred within a reasonable time after they learned of the administrative decisions.

Orders No. 22-UI-207556 and 22-UI-207568 therefore are reversed, and these matters remanded for a hearing on whether claimant's late request for hearing should be allowed and, if so, the merits of decisions # 134755 and 132715.

**DECISION:** Order No. 22-UI-207556 and 22-UI-207568 are set aside, and these matters remanded for further proceedings consistent with this order.

**DATE of Service:** April 25, 2023

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

**NOTE:** The failure of any party to appear at the hearings on remand will not reinstate Orders No. 22-UI-207556 and 22-UI-207568 or return these matters to EAB. Only a timely application for review of the respective subsequent order(s) 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**  
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