

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0469**

*Late Application for Review Dismissed Without Prejudice*

**PROCEDURAL HISTORY AND FINDINGS OF FACT:** On December 2, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and was disqualified from receiving unemployment insurance benefits effective November 7, 2021 (decision # 63244).<sup>1</sup> Claimant filed a timely request for hearing. On September 19, 2022, the Office of Administrative Hearings (OAH) served notice of a telephone hearing on decision # 63244 scheduled for October 3, 2022 at 2:30 p.m. to be presided over by ALJ Blam-Linville. Also on September 19, 2022, OAH served notices of a combined telephone hearing regarding two separate administrative decisions for which claimant had requested hearings, for which a combined hearing was scheduled for October 3, 2022 at 1:30 p.m. to be presided over by ALJ Blam-Linville. Each of the three notices of hearing contained the same telephone number and access code.

On October 3, 2022, claimant appeared for the 1:30 p.m. hearing and ALJ Blam-Linville conducted a hearing on those separate matters. At approximately the mid-point of the 1:30 p.m. hearing, claimant began to testify about their work separation. Case No. 2021-UI-53884 & Case No. 2021-UI-53881, Audio Record at 29:53. ALJ Blam-Linville informed claimant that “you may have another hearing at some point in time on the separation issue, but neither of our two issues today actually involve the separation.” Case No. 2021-UI-53884 & Case No. 2021-UI-53881, Audio Record at 30:55. The ALJ also stated, “None of this is relevant to either of the two issues before us here today. Again, you might have another hearing coming up where this is relevant but, unfortunately, I only have jurisdiction to hear issues, um, for the late report so the failed claim [*sic*] to timely report benefits and then whether or not you were actively seeking work, those are the only two issues at hearing here today.” Case No. 2021-UI-53884 & Case No. 2021-UI-53881, Audio Record at 32:00.

At about the 57 and 58-minute marks of the 1:30 p.m. hearing, chimes are audible, indicating that individuals had joined the hearing. Case No. 2021-UI-53884 & Case No. 2021-UI-53881, Audio Record

<sup>1</sup> Although decision # 63244 listed a disqualification date of November 17, 2021, that date is presumed to be a typographical error. Because November 7, 2021 is the Sunday preceding the date of the November 8, 2021 discharge listed in decision # 63244’s findings, the date of disqualification was November 7, 2021.

at 57:39, 58:51. ALJ Blam-Linville asked for the individuals who joined to identify themselves but they failed to do so. Case No. 2021-UI-53884 & Case No. 2021-UI-53881, Audio Record at 59:16. At about the one-hour mark of the 1:30 p.m. hearing, more chimes are audible, indicating individuals had joined the hearing. Case No. 2021-UI-53884 & Case No. 2021-UI-53881, Audio Record at 1:00:18, 1:01:06; 1:01:23; 1:01:37. Then, at approximately the one-hour, two-minute mark, ALJ Blam-Linville concluded the 1:30 p.m. hearing. Case No. 2021-UI-53884 & Case No. 2021-UI-53881, Audio Record at 01:02:15.

The audio record of the 1:30 p.m. hearing continued recording. At approximately the one-hour, two minute mark of the recording, which corresponded to just after 2:30 p.m., claimant stated “hello.” Case No. 2021-UI-53884 & Case No. 2021-UI-53881, Audio Record at 01:02:29. ALJ Adamson then identified himself, asked if claimant was present, and received no answer. Case No. 2021-UI-53884 & Case No. 2021-UI-53881, Audio Record at 01:02:39. Additional ALJs joined the hearing for observation and training purposes. Case No. 2021-UI-53884 & Case No. 2021-UI-53881, Audio Record at 01:03:50; 01:04:20. ALJ Adamson again asked if claimant was present and received no answer. Case No. 2021-UI-53884 & Case No. 2021-UI-53881, Audio Record at 01:06:08. At about the one-hour, 14 minute mark of the recording, ALJ Adamson announced his intention to dismiss claimant’s request for hearing on decision # 63244 for failure to appear. Case No. 2021-UI-53884 & Case No. 2021-UI-53881, Audio Record at 01:13:49 to 01:14:33. The employer did appear for the hearing.

On October 11, 2022, ALJ Adamson issued Order No. 22-UI-204689, dismissing claimant’s request for hearing for failure to appear and leaving decision # 63244 undisturbed. On October 24, 2022, claimant faxed an application for review form to the Employment Appeals Board (EAB) requesting review of Order No. 22-UI-204689. Pursuant to OAR 471-041-0060(4) (effective May 13, 2019), because claimant was deemed to have failed to appear at the hearing scheduled for October 3, 2022 at 2:30 p.m., EAB treated claimant’s October 24, 2022 submission as a timely request to reopen the hearing under ORS 657.270(5). On October 31, 2022, EAB mailed a letter notifying claimant their application for review was being treated as a request to reopen the October 3, 2022 hearing, that EAB was sending claimant’s reopen request to OAH for further processing, and that EAB would take no further action in the case. The letter also specified that if OAH issued a new order in the case, claimant would have the right to appeal the new order to EAB by filing an application for review.

ALJ Kangas considered claimant’s request to reopen, and on March 9, 2023 issued Order No. 23-UI-218485, denying claimant’s request to reopen and leaving Order No. 22-UI-204689 undisturbed. On March 29, 2023, Order No. 23-UI-218485 became final without claimant having filed an application for review with EAB. On April 18, 2023, claimant filed a late application for review of Order No. 23-UI-218485 with EAB.

**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 application 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.

**CONCLUSIONS AND REASONS:** The application for review is dismissed without prejudice.

On April 18, 2023, the appellant filed an application for review of Order No. 23-UI-218485 with EAB. ORS 657.270(6) and ORS 657.270(7)(b) required the application for review to be filed no later than March 29, 2023. The appellant's application for review is therefore late, and this application for review is dismissed.

The deadline for filing an application for review may be extended a reasonable time upon a showing of good cause. *See* ORS 657.875; OAR 471-041-0070 (May 13, 2019). If the appellant believes they have good cause and filed their late application for review within a reasonable time, the appellant may request that EAB reconsider this decision under OAR 471-041-0145 (May 13, 2019).

EAB will dismiss any request for reconsideration that does not include **all five** of the following:

1. The appellant must file the request for reconsideration within 20 days of the date this decision was mailed; the date this decision was mailed is May 23, 2023, *and*
2. The appellant must include a statement on the request for reconsideration declaring that they sent a copy of the request to the other party, *and*
3. The appellant must provide additional specific details about the reason(s) they filed the application for review late.

Please note that the information needed is specifically why claimant did not file their application for review of the ALJ's order denying their request to reopen (Order No. 23-UI-218485) by the deadline of March 29, 2023. The information requested is why claimant's application for review of that particular ALJ order, Order No. 23-UI-218485, which was issued March 9, 2023, was late.

For example, the appellant should include specific information about the date they received the ALJ's order, whether they read it, whether they agreed or disagreed with the ALJ's order, the reason(s) why they did not file the application for review before the deadline, how the reason(s) affected their ability to file a timely application for review, and any other specific details that might help EAB determine whether or not the appellant had "good cause," which means factors or circumstances beyond their reasonable control prevented them from filing a timely application for review, *and*

4. The appellant must provide the date the circumstances that prevented them from filing a timely application for review (which they listed in response to #3, above) ceased to exist, *and*
5. The appellant must provide sufficient information to prove that they filed their application for review within seven days of that date.

The appellant may file a request for reconsideration in many ways; please note that you need only file *one* request for reconsideration:

1. Use your smart phone, tablet, or computer to fill out the "File a Written Argument" form, available on EAB's website: <https://www.oregon.gov/EMPLOY/EAB/Pages/default.aspx>, *or*

2. Use your smart phone, tablet, or computer to send an email to EAB at [OED EAB OFFICE@employ.oregon.gov](mailto:OED_EAB_OFFICE@employ.oregon.gov), *or*
3. Send the request by U.S. mail or another delivery service, addressed to 875 Union St NE, Salem, Oregon 97311, *or*
4. Send EAB a fax at 503-378-2129.

**DECISION:** The application for review filed April 18, 2023 is dismissed. Order No. 23-UI-218485 remains undisturbed.

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

**DATE of Service:** May 23, 2023

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



# 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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