

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0472**

*Affirmed*  
*Late Request for Hearing Dismissed*

**PROCEDURAL HISTORY:** On September 16, 2022, 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 August 21, 2022 (decision # 141230). On October 6, 2022, decision # 141230 became final without claimant having filed a request for hearing. On October 18, 2022 claimant filed a late request for hearing.

ALJ Kangas considered claimant's request, and on March 2, 2023 issued Order 23-UI-217688, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by March 16, 2023. On March 8, 2023, claimant filed a timely response to the appellant questionnaire. On March 14, 2023, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 23-UI-217688 was vacated and that a hearing would be scheduled to determine if claimant had good cause for his late request for hearing and, if so, the merits of decision # 141230. On March 29, 2023, ALJ Micheletti conducted a hearing, at which the employer failed to appear, and on April 7, 2023, issued Order No. 23-UI-221519, dismissing claimant's request for hearing on decision # 141230 as late without good cause. On April 18, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

**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 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:** Claimant submitted written arguments on April 18 and April 26, 2023 and May 3, 2023. Claimant did not declare that he provided a copy of his April 18, 2023 argument to the opposing party as required by OAR 471-041-0080(2)(a) (May 13, 2019). Claimant's April 26, 2023 and May 3, 2023 arguments contained information that was not part of the hearing record, and did not show

that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2). EAB considered claimant's April 26, 2023 and May 3, 2023 arguments to the extent that they were based on the record.

**FINDINGS OF FACT:** (1) Cool Water RV & Auto Center LLC employed claimant from 2007 until approximately December 25, 2021. Claimant worked for the employer again from May 2022 until August 25, 2022. Because there were two different work separations, the Department issued two different administrative decisions, one for each separation.

(2) On August 1, 2022, before any administrative decision had been issued, claimant contacted the Department via the Department's "ContactUs" form requesting a hearing to provide additional information regarding the December 2021 work separation.

(3) On August 2, 2022, the Department responded to claimant, stating that an appealable decision regarding whether claimant was disqualified from receiving benefits based on the December 2021 work separation had not yet been issued and that claimant could not request a hearing until a decision was issued.

(4) On August 9, 2022, the Department issued an administrative decision related to the December 2021 work separation. This decision found that claimant was disqualified from receiving benefits based on that work separation, and had an appeal deadline of August 29, 2022.

(5) On August 23, 2022 and August 24, 2022, the Department attempted to contact claimant to determine if he wanted to request a hearing on the August 9, 2022 administrative decision regarding the December 2021 work separation.

(6) On August 29, 2022, claimant called and spoke to a Department representative and successfully requested a hearing on the August 9, 2022 administrative decision. During this contact with the Department, claimant also discussed reopening his claim for benefits following the August 25, 2022 work separation.

(7) On September 16, 2022, the Department issued decision # 141230 related to the August 25, 2022 work separation. Decision # 141230 was mailed to claimant's address on file with the Department and 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 October 6, 2022. This decision DENIES benefits. If there are other decisions affecting your eligibility for benefits, you must appeal those decision(s) separately." Exhibit 1 at 2.

(8) Between September 16, 2022 and October 18, 2022, the Department has no record of any contact between claimant and the Department.

(9) On October 18, 2022, claimant went to a WorkSource office and was advised to file a request for hearing on decision # 141230 online if he disagreed with it. Claimant used the Department's website to submit a request for hearing on decision # 141230 that same day.

**CONCLUSION AND REASONS:** Claimant’s late request for hearing is dismissed.

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 # 141230 was due by October 6, 2022. Claimant did not file a request for hearing on this decision until October 18, 2022. Accordingly, the request was late. At hearing and in his appellant questionnaire response, claimant offered various explanations for the lateness of the request for hearing; however, he did not establish good cause for the late request.

Claimant stated in his response to the appellant questionnaire that he received decision # 141230 on September 22, 2022. EAB Exhibit 1 at 5. However, claimant gave conflicting testimony at hearing about receiving the decision, saying at first that he “very clearly” remembered receiving decision # 141230 “on or before October 6, 2022,” then later testifying that “I may not have received that actual mailing, because I don’t recall it[.]” Transcript at 18-19, 40. There is a presumption that a letter duly directed and mailed was received in the regular course of the mail. ORS 40.135(1)(q). The Department had no record of decision # 141230 being returned as undeliverable. Given claimant’s varying accounts of whether he received decision # 141230, and the fact that it was not returned to the Department as undeliverable, claimant has not overcome the presumption that he received decision # 141230 in the normal course of the mail. The record therefore shows that claimant was aware of decision # 141230 and his appeal rights prior to the October 6, 2022 deadline to timely request a hearing.

Further, claimant wrote in his appellant questionnaire response that he submitted his request for hearing on decision # 141230 “before October 9, 2022.” EAB Exhibit 1 at 5. However, claimant’s request for hearing was filed electronically on October 18, 2022. Exhibit 2 at 2. At hearing, claimant testified that upon receiving decision # 141230, “I called and talked to some – a representative about that, and I had the paperwork, and I mailed the paperwork in.” Transcript at 19. However, claimant did not produce any evidence of this mailing, and the Department had no record receiving this filing by mail. Additionally, claimant did not provide details about when this mailing occurred. When asked further about this filing, claimant testified, “I think I faxed it or something.” Transcript at 20. Claimant offered no evidence of this fax outside of his testimony and the Department had no record of receiving a fax from claimant. Further, claimant did not provide a date of when the fax was sent, or the number that the fax was sent to. Given the varying accounts and lack of supporting documentation, it is more likely than not the claimant did not submit a request for hearing on or before the October 6, 2022 deadline.

Claimant also contended that any mistake he made concerning the deadline to file his request for hearing on decision # 141230 was excusable due to incorrect information provided by the Department. The deadline to submit the request for hearing was October 6, 2022, however claimant’s appellant questionnaire response stated, “I was told a later date than that the week of October 18th.” EAB Exhibit 1 at 5. The Department has no record of any representative telling claimant of an alternative deadline for filing a request for hearing on decision # 141230. Claimant did not provide the specific date of this alternative deadline, nor the circumstances under which the alternative deadline was allegedly provided

to him. As such, claimant has not established that he was provided an alternative deadline by a Department representative, and as a result, that his application was filed late due to an excusable mistake concerning the filing deadline.

Ultimately, claimant's failure to file a timely request for hearing on decision # 141230 was likely a result of claimant misunderstanding the need to timely request a hearing on each administrative decision with which he disagreed. Claimant repeatedly testified that he believed he was "denied" benefits twice, which he found confusing. Transcript at 13-15. Likely, claimant was referring to two administrative decisions being issued in close succession that determined he was disqualified from receiving benefits based on work separations from the same employer, the first issued August 9, 2022 based on the December 2021 work separation, and decision # 141230, issued September 16, 2022 based on the August 25, 2022 work separation. However, claimant failed to show that any misunderstanding concerning his appeal rights that may have arisen from the similarity or timing of these decisions was an "excusable mistake" within the meaning of the administrative rules that, for example, raises a due process issue, or that was the result of inadequate notice, reasonable reliance on another or the inability to follow directions despite substantial efforts to comply. Because claimant failed to establish good cause for his late request for hearing on decision # 141230, his late request for hearing is dismissed.

**DECISION:** Order No. 23-UI-221519 is affirmed.

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

**DATE of Service:** May 25, 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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