

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0638**

*Reversed*  
*Request to Reopen Allowed*  
*Merits Hearing Required*

**PROCEDURAL HISTORY:** On May 27, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing an overpayment of \$18,225 in combined state and federal benefits that claimant was required to repay to the Department, a \$788.10 monetary penalty, and a 36-week disqualification from future benefits. Claimant filed a timely request for hearing. On January 31, 2023, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for March 3, 2023. On March 3, 2023, claimant failed to appear at the hearing, and ALJ Lucas issued Order No. 23-UI-217887, dismissing claimant's request for hearing due to her failure to appear, leaving the May 27, 2021 administrative decision undisturbed. On March 19, 2023, claimant filed a timely request to reopen the hearing. On May 25, 2023, ALJ Lucas conducted a hearing, and on June 1, 2023 issued Order No. 23-UI-226652, denying claimant's request to reopen the March 3, 2023 hearing, leaving Order No. 23-UI-217887 undisturbed. On June 4, 2023, claimant filed an application for review of Order No. 23-UI-226652 with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Claimant has a diagnosis of attention deficit hyperactivity disorder (ADHD).

(2) Claimant moved to the United States when she was approximately six years old, and speaks English as a second language. Claimant's native language is Urdu, which uses an entirely different alphabet than English. Although claimant obtained an English-language college degree, her graduation was significantly delayed because she failed courses due to difficulties she had in reading comprehension, particularly due to confusion with words and dates.

(3) On January 31, 2023, OAH mailed to claimant's address of record a notice of hearing scheduling the hearing on the May 27, 2021 administrative decision for March 3, 2023. Claimant received the notice of hearing in early February 2023.

(4) After receiving the notice of hearing, claimant contacted OAH to confirm the date of the hearing. Claimant received confirmation of the hearing date, but incorrectly wrote down the month of the hearing as May, rather than March. As a result, claimant believed the hearing to be scheduled for May 2023, and missed the hearing.

**CONCLUSIONS AND REASONS:** Claimant's request to reopen the March 3, 2023 is allowed. Order No. 23-UI-226652 therefore is reversed, and a hearing on the merits of the May 27, 2021 administrative decision is required.

ORS 657.270(5) provides that any party who failed to appear at a hearing may request to reopen the hearing, and the request will be allowed if it was filed within 20 days of the date the hearing decision was issued and shows good cause for failing to appear. "Good cause" exists when the requesting party's failure to appear at the hearing arose from an excusable mistake or from factors beyond the party's reasonable control. OAR 471-040-0040(2) (February 10, 2012). The party requesting reopening shall set forth the reason(s) for missing the hearing in a written statement, which the Office of Administrative Hearings (OAH) shall consider in determining whether good cause exists for failing to appear at the hearing. OAR 471-040-0040(3). Under OAR 471-040-0040(2)(b)(B), "good cause" does not include "[n]ot understanding the implications of a decision or notice when it is received."

The order under review concluded that claimant did not have good cause to reopen the hearing, suggesting that claimant's mistake in the date of hearing constituted "not understanding the implications of a decision or notice when it is received." Order No. 23-UI-226652 at 4. This reasoning is a misapplication of the cited rule, which does not apply to claimant's circumstances. The "implications" present in the notice of hearing mailed on January 31, 2023 were that claimant's requested hearing on the May 27, 2021 administrative decision was to be held at a certain time and date. There is no indication in the record that claimant did not understand this. Rather, the fact that claimant contacted OAH to confirm the date of the hearing supports the inference that claimant understood the purpose and implications of the notice of hearing. Claimant missed the hearing simply because she mis-recorded the date of the hearing.

Further, claimant's circumstances are sufficient to show that she had good cause for failing to appear at the hearing. The record shows that claimant speaks English as a second language, has a developmental disorder, and has a history of difficulties with making mistakes with words and dates. At hearing, claimant explicitly testified that her diagnosis of ADHD impacted her ability to understand the January 31, 2023 notice of hearing. Audio Record at 35:20. Given this evidence, as well as the fact that claimant made a specific (if unsuccessful) effort to confirm the correct date of the hearing, claimant's failure to appear at the hearing was the result of an excusable mistake. Claimant therefore had good cause for failing to appear at the March 3, 2023 hearing, her request to reopen the hearing is allowed, and claimant is entitled to a hearing on the merits of the May 27, 2021 administrative decision.

**DECISION:** Order No. 23-UI-226652 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service:** July 12, 2023

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-226652 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

**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**  
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711  
[www.Oregon.gov/Employ/eab](http://www.Oregon.gov/Employ/eab)

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.