

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0798**

*Reversed & Remanded*

**PROCEDURAL HISTORY AND FINDINGS OF FACT:** On March 14, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant received benefits to which they were not entitled, and assessing an overpayment of \$4,420 in regular unemployment insurance (regular UI) benefits, \$3,740 in Pandemic Emergency Unemployment Compensation (PEUC) benefits, and \$13,500 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay to the Department (decision # 141911). On April 4, 2022, decision # 141911 became final without claimant having requested a hearing. On September 29, 2022, claimant filed a late request for hearing on decision # 141911. ALJ Kangas considered claimant's request, and on January 19, 2023 issued Order No. 23-UI-213099, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by February 2, 2023. On February 6, 2023, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 23-UI-213099 with the Employment Appeals Board (EAB). On May 11, 2023, ALJ Kangas mailed a letter to claimant stating that because the response to the appellant questionnaire was late, it would not be considered and a new order would not be issued. This matter comes before EAB based upon claimant's February 6, 2023 application for review of Order No. 23-UI-213099.

**EVIDENTIARY MATTER:** EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is 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.

**CONCLUSIONS AND REASONS:** Order No. 23-UI-213099 is set aside and this matter remanded for a hearing on whether claimant's late request for hearing should be allowed and, if so, the merits of decision # 141911.

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. "Good cause" does not include failure to receive a document due to not notifying the Employment Department or Office of Administrative Hearings of an updated address while the person is claiming benefits or if the person knows, or reasonably should know, of a pending appeal. OAR 471-040-0010(2)(b)(A).

The deadline to file a timely request for hearing on decision # 141911 was April 4, 2022. Claimant filed their request for hearing on September 29, 2022. Therefore, the request for hearing was late. However, claimant may have had good cause to file the request for hearing late because the record shows that claimant may have attempted to file a timely request for hearing and did not know that the request was not received and filed.

The information that claimant provided in their appellant questionnaire response suggests that claimant attempted to file a request for hearing prior to the request that was filed September 29, 2022. Claimant wrote that their request was not filed by the deadline because, "I honestly believed I had already filed," and wrote that they were prompted to file the September 29, 2022 request because, "I had already filed on the unemployment website." EAB Exhibit 1 at 1. Claimant also noted delays of five to seven days in mail from the Department arriving to their post office box. EAB Exhibit 1 at 1. Further inquiry is therefore needed to determine if claimant attempted to file an earlier request for hearing that was not received due to an excusable mistake or factors beyond claimant's reasonable control. If claimant did attempt to file such a request, inquiry must be made as to when that occurred, and if it was not within the timely filing period, whether mailing delays or other factors beyond claimant's reasonable control prevented claimant from attempting to file their request by the deadline.

On remand, the ALJ should inquire as to when claimant received decision # 141911, whether and when claimant attempted to file any requests for hearing, why any requests they may have attempted to file prior to September 29, 2022 might not have been received, and any other factors that may have prevented claimant from filing a timely request for hearing. If the late filing was caused by an excusable mistake or factors beyond claimant's reasonable control, the ALJ also should inquire as to when those factors ceased to exist, and whether claimant filed their request within a reasonable time after any such factors ceased to exist.

Order No. 23-UI-213099 is therefore is set aside, and this matter remanded for a hearing on whether claimant's late request for hearing should be allowed and, if so, the merits of decision # 141911.

**DECISION:** Order No. 23-UI-213099 is 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:** July 27, 2023

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-213099 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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