

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0842**

*Late Application for Review Allowed*  
*Reversed and Remanded*

**PROCEDURAL HISTORY:** On October 21, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not eligible to receive Pandemic Emergency Unemployment Compensation (PEUC) benefits for the weeks of October 18, 2020 through May 1, 2021 (weeks 43-20 through 17-21) (decision # 122216). On November 10, 2021, decision # 122216 became final without claimant having filed a request for hearing. On August 5, 2022, claimant filed a late request for hearing on decision # 122216. ALJ Kangas considered claimant's request, and on November 14, 2022 issued Order No. 22-UI-207227, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by November 28, 2022. On December 5, 2022, Order No. 22-UI-207227 became final without claimant having filed a response to the appellant questionnaire or an application for review with the Employment Appeals Board (EAB). On January 19, 2023, claimant filed a late response to the appellant questionnaire. On July 26, 2023, ALJ Kangas mailed a letter stating that the Office of Administrative Hearings (OAH) would not consider claimant's questionnaire response or issue another order regarding this matter because the questionnaire response was late. On August 1, 2023, claimant filed a late application for review of Order No. 22-UI-207227.

**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 written statements enclosed with the late application for review, marked as EAB Exhibit 1; and claimant's late response to the appellant questionnaire, marked as EAB Exhibit 2. A copy of these exhibits have been provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 or 2 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 exhibits will remain in the record.

**FINDINGS OF FACT:** (1) On October 21, 2021 the Department mailed decision # 122216 to claimant's address on file with the Department. Decision # 122216 stated, "Any appeal from this decision must be filed on or before November 10, 2021 to be timely." Exhibit 1 at 2. Decision # 122216 was mailed to an address in Sacramento, California.

(2) Order No. 22-UI-207227, mailed to claimant on November 14, 2022, stated, “You may appeal this decision by filing the attached form Application for Review with the Employment Appeals Board within 20 days of the date that this decision is mailed.” Order No. 22-UI-207227 at 2. Order No. 22-UI-207227 also stated on its Certificate of Mailing, “Any party may appeal this Order by filing a Request for Review with the Employment Appeals Board no later than December 5, 2022.” Order No. 22-UI-207227 was mailed to an address in Sacramento, California.

(3) The order under review explained that claimant had two different “options for review”: either to “[p]rovide additional requested information to the Office of Administrative Hearings for reconsideration” or “[r]equest review of this decision by the Employment Appeals Board.” Order No. 22-UI-207227 at 2.

**CONCLUSIONS AND REASONS:** Claimant’s late application for review is allowed. Order No. 22-UI-207227 is reversed, and this matter remanded for further development of the record.

**Late application for review.** An application for review is timely if it is filed within 20 days of the date that the Office of Administrative Hearings (OAH) mailed the order for which review is sought. ORS 657.270(6); OAR 471-041-0070(1) (May 13, 2019). The 20-day filing period may be extended a “reasonable time” upon a showing of “good cause.” ORS 657.875; OAR 471-041-0070(2). “Good cause” means that factors or circumstances beyond the applicant’s reasonable control prevented timely filing. OAR 471-041-0070(2)(a). A “reasonable time” is seven days after the circumstances that prevented the timely filing ceased to exist. OAR 471-041-0070(2)(b). A late application for review will be dismissed unless it includes a written statement describing the circumstances that prevented a timely filing. OAR 471-041-0070(3).

The application for review of Order No. 22-UI-207227 was due by December 5, 2022. Because claimant did not file their application for review until August 1, 2023, the application for review was late. On a statement enclosed with their application for review, claimant explained that they temporarily moved to California in 2020, as a result of the COVID-19 pandemic, and that they gave the Department their California address at that time. EAB Exhibit 1 at 3. Claimant further explained that they “updated all of [their] information with [the Department], and they still sent all of my decision[s] to California and not my current address[.]” EAB Exhibit 1 at 1.

It is not clear from claimant’s statements precisely when they received the order under review. As claimant filed a response to the appellant questionnaire on January 19, 2023, it can be reasonably inferred from the record that claimant received the order under review on or prior to that date. Further, as the record shows that the order under review *was* mailed to an address in California, it is reasonable to infer that claimant did not receive the order under review until after the timely appeal deadline had passed, and that they filed the questionnaire response once they finally received it. Thus, claimant failed to file a timely application for review due to factors or circumstances beyond claimant’s reasonable control.

While claimant could presumably have filed an application for review at the same time that they filed the questionnaire response in January 2023, they did not actually file the application for review until August 1, 2023. The order under review, however, did not advise claimant that they could file both a response to the appellant questionnaire *and* an application for review; neither did the order under review

advise claimant how to proceed if they received the order under review after the timely filing deadlines for either document had passed. *See* Order No. 22-UI-207227 at 2. Thus, the factors or circumstances which prevented claimant's timely filing continued after they received the order under review. The ALJ's letter, explaining that they would not consider the questionnaire response, was dated July 26, 2023. Claimant filed their application for review less than a week later, on August 1, 2023. As such, it appears that claimant's receipt of that letter led them to realize that their prior attempts at appeal had been unsuccessful, and that they should file an application for review. The factors or circumstances which prevented claimant's timely filing therefore ceased on that date. Because claimant filed their application for review less than seven days after that letter was mailed, claimant filed it within a reasonable time. Therefore, claimant's late application for review is allowed.

**Late request for hearing.** 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.

Under OAR 471-040-0010(1)(a)(A), "good cause" includes "[f]ailure to receive a document because the Employment Department or Office of Administrative hearings mailed it to an incorrect address despite having the correct address." Under OAR 471-040-0010(1)(b)(A), "good cause" does *not* include "[f]ailure 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."

The request for hearing on decision # 122216 was due by November 10, 2021. Because claimant did not file their request for hearing until August 5, 2022, the request was late. As with claimant's late application for review, above, claimant's late request for hearing in this matter appears to be due, at least in part, to the decision having been mailed to an address at which claimant no longer resided. It is not clear from claimant's statements (either on the appellant questionnaire response or the statements enclosed with the application for review) when, if at all, they actually received decision # 122216. Neither is it clear what caused them to file the late request for hearing when they did, on August 5, 2022. On remand, the ALJ should develop the record to clarify when these events occurred, such that it can be determined whether claimant had good cause to file the late request for hearing and whether they did so within a "reasonable time." Further, the ALJ should inquire as to when claimant updated their address with the Department and, to the extent that they failed to do so prior to the issuance of decision # 122216, whether they were either claiming benefits at the time or knew or had reason to know about a pending appeal.

Order No. 22-UI-207227 therefore is reversed, 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 # 122216.

Note: in a statement enclosed with their August 5, 2022 request for hearing, claimant indicated that they received notice of an overpayment assessed to them by the Department, and requested to appeal both the overpayment decision and decision # 122216. Exhibit 1 at 2-3. As such, EAB has forwarded claimant's original request for hearing to the Department for consideration as a request for hearing on the

overpayment decision. Further, a review of the Department's records suggests that this overpayment was, at least in part, the result of the determination in decision # 122216 that claimant was not eligible to receive PEUC benefits. Therefore, if an appeal is opened on that overpayment decision, OAH could consolidate both matters at hearing.

**DECISION:** Claimant's late application for review of Order No. 22-UI-207227 is allowed. Order No. 22-UI-207227 is set aside, and this matter remanded for further proceedings consistent with this order.

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

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

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-207227 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 الاستئناف 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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