

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0947**

*Reversed*  
*Late Request for Hearing Allowed*  
*Merits Hearing Required*

**PROCEDURAL HISTORY:** On May 12, 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 a \$1,254 overpayment that claimant was required to repay to the Department, a \$250.80 monetary penalty, and an 8-week penalty disqualification from future benefits (decision # 195025). On June 1, 2021, decision # 195025 became final without claimant having filed a request for hearing. On June 8, 2021, claimant filed a late request for hearing on decision # 195025.

ALJ Kangas considered claimant's request, and on July 15, 2021 issued Order No. 21-UI-170389, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by July 29, 2021. On July 21, 2021, claimant filed a timely response to the appellant questionnaire. On October 12, 2021, the Office of Administrative Hearings (OAH) mailed a letter to the parties stating that Order No. 21-UI-170389 was vacated, and that a hearing would be scheduled to determine whether claimant had good cause to file her request for hearing late and, if so, the merits of decision # 195025.

On July 17, 2023, ALJ Monroe conducted a hearing, and on August 7, 2023 issued Order No. 23-UI-232504, dismissing claimant's request for hearing as late without good cause. On August 23, 2023, claimant filed an application for review of Order No. 23-UI-232504 with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** EAB did not consider claimant's written argument when reaching this decision because she did not include a statement declaring that she provided a copy of her argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019).

**FINDINGS OF FACT:** (1) On May 12, 2021, the Department mailed decision # 195025 to claimant at claimant's mailing address of record. Decision # 195025 stated, "See enclosed form for appeal rights. To be timely, any appeal from this decision must be filed on or before June 1, 2021." Exhibit 1 at 1.

(2) Claimant's primary language is Ukrainian, though she speaks some English. Claimant did not understand the appeal rights included with decision # 195025 due to difficulties comprehending written English and because the document was not written in Ukrainian. Prior to the June 1, 2021 filing deadline, claimant visited two Department offices for assistance, but they were closed due to the COVID-19 pandemic. She also had difficulty reaching the Department by telephone due to call volume at that time.

(3) On June 1, 2021, claimant called the Department and spoke to a representative in English. Claimant stated that she disagreed with decision # 195025, however the Department generally did not accept requests for hearing by telephone at that time. The representative noted that during the conversation, claimant "was advised of appeal options," but did not note whether claimant was told that the deadline for filing a request for hearing was that day. Transcript at 4. Claimant did not fully understand from this conversation her right to appeal decision # 195025 or the deadline to do so. Following the call, claimant attempted to file an online request for hearing but was unable to do so due to difficulties comprehending written English on the Department's website.

(4) On June 7, 2021, claimant called the Department and spoke to a representative in English about repaying the overpayment assessed in decision # 195025. Claimant's appeal rights and methods for requesting a hearing were again discussed, this time in greater detail.

(5) On June 8, 2021, claimant filed a request for hearing on decision # 195025 online without further assistance.

**CONCLUSIONS AND REASONS:** Claimant's late request for hearing is allowed, and a hearing on the merits of decision # 195025 is required.

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 failing to understand the implications of a decision or notice when it is received. OAR 471-040-0010(1)(b)(B). However, good cause for failing to file a timely request for hearing shall exist when the appellant provides satisfactory evidence that the Employment Department failed to follow its own policies with respect to providing service to a limited English proficient person, including the failure to communicate orally or in writing in a language that could be understood by the limited English proficient person upon gaining knowledge that the person needed or was entitled to such assistance. OAR 471-040-0010(2).

The deadline to file a request for hearing on decision # 195025 was June 1, 2021. Claimant filed her request for hearing on June 8, 2021. Accordingly, claimant's request for hearing was late.

The order under review concluded that claimant did not have good cause to file her request for hearing late, because although "claimant did not fully comprehend that she was afforded an opportunity to appeal the decision" when she received it, she ultimately filed a late request for hearing online without

assistance, and therefore her failure to do so earlier “was not beyond her reasonable control.” Order No. 23-UI-232504 at 4. The record does not support this conclusion.

Claimant was prevented from timely filing her request for hearing because she was a limited English proficient person and did not fully understand written communications from the Department that were not in Ukrainian. Claimant testified that the reason she could not have submitted her online request for hearing prior to the deadline was, “Because not reading English, it took me a while to understand, and when I kind of got some clue, that was too late.” Transcript at 13. She clarified, “Due to limited English, at that time I didn’t comprehend that I need to file an appeal. I didn’t know that I have to request a hearing to be in front of the judge.” Transcript at 13. It is unclear from the record whether claimant notified or attempted to notify the Department of her limited English proficiency prior to the issuance of decision # 195025, however the Department representative testified she did not see a notation on claimant’s account about her having limited English proficiency. Transcript at 5. Claimant’s late request for hearing listed Ukrainian as her preferred language. Exhibit 2 at 2.

Even if the Department was unaware of claimant’s limited English proficiency at the time decision # 195025 was issued, claimant took several actions immediately upon receipt of the decision to seek assistance from the Department in understanding it. These actions included attempting to visit two Department offices, which were closed to the public due to the pandemic, and attempting, unsuccessfully, to reach the Department by telephone. Claimant was therefore denied opportunities to notify the Department of her limited ability to comprehend written English for nearly all the timely appeal period, despite claimant’s efforts to contact them.

Since she did not understand the written information regarding her appeal rights included with decision # 195025 because they were not in Ukrainian, claimant had only the assistance of the telephone representative she reached on June 1, 2021 to rely upon for that information prior to the filing deadline. The record does not establish that claimant was informed of the deadline to file the request for hearing during this call, nor does it establish that inquiry was made into whether she needed assistance in filing the request due to a potential language barrier. The fact that claimant needed to call the Department to have decision # 195025 and her appeal rights explained to her should have alerted the Department that she was likely in need of such assistance, and constituted constructive knowledge by the Department of such need. Without understanding that a deadline was involved, it was not unreasonable for claimant to attempt to navigate the Department’s online filing system in English over the next week and, when unsuccessful, to contact the Department again on June 7, 2021 for further assistance. Claimant was ultimately able to file the late request for hearing the following day because of this assistance.

Accordingly, claimant has provided satisfactory evidence that the Department knew, prior to the deadline for timely filing, that claimant was entitled to assistance in filing her request for hearing due to limited English proficiency, which she did not receive. She therefore has shown good cause pursuant to OAR 471-040-0010(2) to extend the deadline for timely filing. The factor that prevented timely filing ceased on June 7, 2021, the date that she received sufficient assistance from the Department to successfully navigate the online filing process despite her limited English proficiency. Because she filed her late request for hearing on June 8, 2021, she did so within a “reasonable time” after the factor that prevented timely filing ceased. Therefore, claimant’s late request for hearing is allowed, and a hearing on the merits of decision # 195025 is required.

**DECISION:** Order No. 23-UI-232504 is reversed. Claimant's late request for hearing is allowed, and this matter remanded for a hearing on the merits of decision # 195025.

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

**DATE of Service: October 6, 2023**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-232504 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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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.