

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-1011**

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

**PROCEDURAL HISTORY:** On December 28, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not able to work, and was therefore ineligible to receive unemployment insurance benefits, for the weeks including December 11, 2022 through December 24, 2022 (weeks 50-22 through 51-22) and until the reason for the denial had ended (decision # 122426). On January 17, 2023, decision # 122426 became final without claimant having filed a request for hearing.

On February 10, 2023, claimant filed a late request for hearing on decision # 122426. ALJ Kangas considered claimant's request, and on June 29, 2023 issued Order No. 23-UI-229158, 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 13, 2023. On July 9, 2023, claimant filed a timely response to the appellant questionnaire. On August 3, 2023, the Office of Administrative Hearings (OAH) mailed a letter to claimant stating that Order No. 23-UI-229158 was vacated and that a hearing would be scheduled to determine whether claimant's late request for hearing should be allowed and, if so, the merits of decision # 122426.

On August 21, 2023, ALJ Amesbury conducted a hearing and issued Order No. 23-UI-233898, re-dismissing claimant's request for hearing as late without good cause and leaving decision # 122426 undisturbed. On September 6, 2023, claimant filed an application for review of Order No. 23-UI-233898 with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** EAB considered claimant's written argument in reaching this decision.

**FINDINGS OF FACT:** (1) On December 28, 2022, the Department mailed decision # 122426 to claimant at claimant's address of record. Decision # 122426 stated, "You have the right to appeal this decision if you do not believe it is correct. Your request for appeal must be filed no later than January 17, 2023." Exhibit 1 at 2.

(2) Claimant has a developmental disability. While she lives independently, claimant relies on her mother to help her manage her finances and provide assistance with some other tasks. One of those tasks is assisting claimant with mail she receives by explaining the contents to claimant and advising her on how to respond. Claimant is typically able to understand and respond to routine bills she receives, but often requires assistance to understand or respond to more complex correspondence. Claimant's mother periodically assists claimant with this type of mail, usually when claimant brings specific items of mail to her attention.

(3) In early January 2023, claimant returned to her home after having visited her father for the holidays beginning in December 2022. Claimant retrieved decision # 122426 from her mailbox upon her return home. Due to her disability, claimant was unable to understand the significance of receiving mail from the Department, specifically that it might be time sensitive. Claimant placed the envelope in a pile with other mail for which she required assistance from her mother, but did not immediately tell her mother that she had received the letter.

(4) On February 10, 2023, claimant's mother was at claimant's apartment and discovered decision # 122426 unopened. Claimant's mother immediately read decision # 122426, contacted the Department, and filed a late request for hearing on claimant's behalf.

**CONCLUSIONS AND REASONS:** Claimant's late request for hearing is allowed and a hearing on the merits of decision # 122426 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.

The order under review concluded that claimant's request for hearing was late because she "apparently made a conscious decision not to open [decision # 122426]," and that did not constitute good cause for late filing. Order No. 23-UI-233898 at 5. The record supports that claimant's request was filed late due to her failure to timely open decision # 122426. However, the record shows this failure was the result of an excusable mistake caused by claimant's inability to appreciate the time-sensitive nature of mail from the Department more likely than not due to her disability.

The deadline to file a request for hearing on decision # 122426 was January 17, 2023. Claimant's request for hearing was filed on February 10, 2023. Accordingly, the request for hearing was late. Claimant's mother discovered decision # 122426 with other unopened mail at claimant's home on February 10, 2023. This suggests that claimant timely received decision # 122426 in early January 2023 after she returned from visiting her father, but that she failed to open the envelope or alert her mother to its arrival. That inaction prevented claimant from filing a request for hearing timely.

Claimant's failure to open the envelope containing decision # 122426 or alert her mother to its arrival was an excusable mistake. Claimant's mother testified that as a result of claimant's developmental disability, claimant has the equivalent of a third-grade education. Transcript at 8. Claimant testified that

while she is able to recognize some types of mail as “important” and seek immediate assistance with it by reading it to her mother over the phone, she is sometimes unable to even read a letter. Transcript at 22-23. Claimant further testified, “If it’s something from the Unemployment Office, I usually open it, and if it’s something I don’t understand then that’s when I turn around and call mom, and then like if she’s out running around and she has time that she could come by, then I can give her the letter and then she can see what it’s all about.” Transcript at 21. Claimant testified that from January to April of each year, her mother’s busy season at work, she sees and communicates with her mother infrequently so as not to keep her from her work. Transcript at 24. Claimant’s mother testified that February 10, 2023 was the first time she met with claimant in-person following claimant’s return from her trip in early January. Transcript at 30.

It is reasonable to infer from this testimony that claimant did not understand the time sensitivity involved with correspondence from the Department, and while she possibly recognized the general significance of receiving a letter from the Department, she mistakenly thought that the envelope containing decision # 122426 could wait for her mother’s next visit to be opened and its contents explained to her because her mother was busy with work. Such a mistake was excusable in light of claimant’s developmental disability. Accordingly, good cause has been shown to extend the deadline for timely filing. The factor that prevented timely filing ceased to exist on February 10, 2023, when claimant’s mother discovered decision # 122426. As claimant’s mother filed the late request for hearing the same day, it was filed within a “reasonable time” after that factor ceased. Therefore, claimant’s late request for hearing is allowed, and a hearing on the merits of decision # 122426 is required.

**DECISION:** Order No. 23-UI-233898 is reversed. Claimant’s late request for hearing is allowed and a hearing on the merits of decision # 122426 is required.

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

**DATE of Service: October 16, 2023**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-233898 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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