

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-1226**

*Affirmed*  
*Request to Reopen Denied*

**PROCEDURAL HISTORY:** On December 31, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was disqualified from receiving unemployment insurance benefits effective May 31, 2020 (decision # 111418). Claimant filed a timely request for hearing. On March 22, 2021, ALJ Micheletti conducted a hearing interpreted in Nepali, and on March 29, 2021, issued Order No. 21-UI-163642, reversing decision # 111418 by concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving benefits based on the work separation. On March 31, 2021, the employer filed an application for review with the Employment Appeals Board (EAB). On May 6, 2021, EAB issued EAB Decision 2021-EAB-0230, reversing Order No. 21-UI-163642 and remanding the matter to the Office of Administrative Hearings (OAH) for further development of the record.

On December 21, 2021, ALJ Micheletti conducted a hearing at which claimant failed to appear, and on December 29, 2021, issued Order No. 21-UI-182889, affirming decision # 111418. On January 18, 2022, Order No. 21-UI-182889 became final without claimant having filed a request to reopen the hearing or an application for review with EAB. On February 18, 2022, claimant filed a late request to reopen the hearing.

On October 12, 2023, ALJ Micheletti conducted a hearing interpreted in Nepali on claimant's late request to reopen, at which the employer failed to appear, and on October 19, 2023, issued Order No. 23-UI-239042, denying claimant's late request to reopen and leaving Order No. 21-UI-182889 undisturbed. On November 1, 2023, claimant filed an application for review of Order No. 23-UI-239042 with 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 FACTS:** (1) In April 2021, claimant moved from her address in Sacramento, California to an address on Sonoma Way in Woodland, California. When claimant moved to the Sonoma Way address in Woodland, California, claimant updated her address information with the Department.

(2) On December 6, 2021, OAH served notice of the remand hearing on decision # 111418, which was scheduled for December 21, 2021, at 9:30 a.m. The notice of hearing was mailed to claimant's former address in Sacramento. As a result, claimant did not receive it. On December 21, 2021, ALJ Micheletti conducted the hearing as scheduled. Claimant failed to appear for the hearing.

(3) On December 29, 2021, ALJ Micheletti issued Order No. 21-UI-182889, which stated, in relevant part:

If you did not appear at the hearing, you may request to reopen the hearing. These requests are governed by OAR 471-040-0040 and 471-040-0041 and should be filed with the Office of Administrative Hearings. Your request to reopen the hearing must: 1) be in writing; 2) show good cause for failing to appear at the hearing; and 3) either be filed within 20 days of when the order from the hearing you missed was mailed, or else show good cause to extend the period the request reopening of your case, and show that you filed your hearing request within seven days of when those factors or circumstances ceased to exist. Include all information regarding your reopen request that you want the Administrative Law Judge to consider when deciding whether to grant your reopen request. Requesting to reopen a hearing with the Office of Administrative Hearings is not the same as seeking review of the order by the Employment Appeals Board.

Order No. 21-UI-182889 at 4. The hearing order was mailed to claimant's former address in Sacramento and claimant did not immediately receive it.

(4) On January 18, 2022, Order No. 21-UI-182889 became final without claimant having filed a request to reopen or an application for review with EAB.

(5) Although Order No. 21-UI-182889 had been mailed to the wrong address, the U.S. Postal Service eventually forwarded the hearing order to claimant's correct address on Sonoma Way in Woodland, California.

(6) On January 19, 2022, claimant received Order No. 21-UI-182889 after the U.S. Postal Service forwarded it.

(7) Nepali was claimant's primary language. She understood about 70% of English when reading it and had been speaking and reading English for about 15 years.

(8) When claimant received Order No. 21-UI-182889, she read it herself and received help from others regarding anything she could not understand. Claimant was confused about what to do because the deadline to timely file an appeal had already passed when she received the order. She called the Department to inquire about "what will be the next steps and what would be done next." October 12, 2023 Transcript at 8. Claimant was told that she could "send a request for the hearing." October 12,

2023 Transcript at 8. Claimant remained confused, felt “confused whether it [would] work or not,” and it “took . . . some time” for her to decide what to do. October 12, 2023 Transcript at 8.

(9) On February 18, 2022, claimant filed a late request to reopen the hearing.

**CONCLUSIONS AND REASONS:** Order No. 23-UI-239042 is affirmed. Claimant’s request to reopen is denied and Order No. 21-UI-182889 remains undisturbed.

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. The period within which a party may request reopening may be extended if the party requesting reopening has good cause for failing to request reopening within the time allowed, and acts within a reasonable time. OAR 471-040-0041(1) (February 10, 2012). “Good cause” exists when an action, delay, or failure to act arises from an excusable mistake or from factors beyond an applicant’s reasonable control. OAR 471-040-0041(2). “A reasonable time,” is seven days after the circumstances that prevented a timely filing ceased to exist. OAR 471-040-0041(3). The party requesting reopening shall set forth the reason(s) for filing a late request to reopen in a written statement, which OAH shall consider in determining whether good cause exists for the late filing, and whether the party acted within a reasonable time. OAR 471-040-0041(4). Under OAR 471-040-0041(2)(b)(B), good cause does not include “Not understanding the implications of a decision or notice when it is received.”

The deadline to file a reopen request on Order No. 21-UI-182889 was January 18, 2022. Because claimant did not file her request to reopen until February 18, 2022, the request to reopen was late.

The record shows that OAH mailed Order No. 21-UI-182889 to claimant’s former address in Sacramento, California despite the fact that claimant updated her address with the Department months prior to its issuance. As a result, claimant did not receive Order No. 21-UI-182889 until January 19, 2022, when it was forwarded to her address in Woodland, California. Claimant established good cause for failing to file a reopen request before the timely filing deadline because she did not receive Order No. 21-UI-182889 until January 19, 2022 due to a factor beyond her reasonable control.

However, after she received Order No. 21-UI-182889 on January 19, 2022, claimant’s further delay in filing a reopen request did not arise from a factor beyond her reasonable control. At that point, claimant was in possession of, and had read, Order No. 21-UI-182889. The hearing order contained the following information:

If you did not appear at the hearing, you may request to reopen the hearing. These requests are governed by OAR 471-040-0040 and 471-040-0041 and should be filed with the Office of Administrative Hearings. Your request to reopen the hearing must: 1) be in writing; 2) show good cause for failing to appear at the hearing; and 3) *either be filed within 20 days of when the order from the hearing you missed was mailed, or else show good cause to extend the period the request reopening of your case, and show that you filed your hearing request within seven days of when those factors or circumstances ceased to exist.* Include all information regarding your reopen request that you want the Administrative Law Judge to consider when deciding whether to grant your reopen

request. Requesting to reopen a hearing with the Office of Administrative Hearings is not the same as seeking review of the order by the Employment Appeals Board.

Order No. 21-UI-182889 at 4 (emphasis added). Although this language contained a regrettable typographical error in that it stated “or else show good cause to extend the period the request reopening” when it should have stated “or else show good cause to extend the period *to* request reopening,” it nonetheless was adequate to put claimant on notice that any further delay in filing a reopen request needed to either be supported by good cause or else occur within seven days of the date the factor responsible for the delay had ceased. Although claimant understood only about 70% of English when reading it, she testified at hearing that when she received Order No. 21-UI-182889, she read it herself and “also I got help from other people whatever I could not understand[.]” October 12, 2023 Transcript at 9. Given the explanation in the order of what was required to make a reopen request, and the fact that claimant read the hearing order and received help from others to understand whatever she could not read, the record supports that as of the date she received and read Order No. 21-UI-182889, the factor beyond her reasonable control responsible for her delay in filing a request to reopen had ceased to exist.

Claimant testified that she waited until February 18, 2022 to file her reopen request because she was confused due to the fact that when she received Order No. 21-UI-182889 on January 19, 2022, it had already become final; that she did not pay attention to the language in the hearing order quoted above that outlined the seven-day reasonable time period to file; and that it was her first time filing a reopen request. October 12, 2023 Transcript at 10-11. These circumstances do not support good cause to extend the deadline to file a reopen request beyond the date claimant received and read Order No. 21-UI-182889 on January 19, 2022 because, under OAR 471-040-0041(2)(b)(B), good cause does not include “not understanding the implications of a decision or notice when it is received.”

Accordingly, claimant showed good cause to extend the deadline to file a request to reopen on Order No. 21-UI-182889 to January 19, 2022. Claimant was permitted to file her reopen request within a seven-day reasonable time of that date, i.e., by January 26, 2022. Claimant did not file her reopen request until February 18, 2022. Thus, claimant did not file her request to reopen within a reasonable time, and claimant’s late request to reopen is denied.

**DECISION:** Order No. 23-UI-239042 is affirmed.

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

**DATE of Service:** December 18, 2023

**NOTE:** You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at [courts.oregon.gov](https://courts.oregon.gov). Once on the website, use the ‘search’ function to search for ‘petition for judicial review employment appeals board’. A link to the forms and information will be among the search results.

**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.