

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-1255**

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

**PROCEDURAL HISTORY:** On December 22, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work for the weeks including December 4, 2022, through December 17, 2022 (weeks 49-22 through 50-22) and was ineligible to receive unemployment insurance benefits for those weeks and until the reason for the denial had ended (decision # 94816). On January 11, 2023, decision # 94816 became final without claimant having filed a request for hearing. On January 12, 2023, claimant filed a late request for hearing on decision # 94816. ALJ Kangas of the Office of Administrative Hearings (OAH) considered claimant's request, and on May 23, 2023, issued Order No. 23-UI-225788, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by June 6, 2023. Claimant did not file a response to the appellant questionnaire. On June 6, 2023, claimant filed a timely application for review of Order No. 23-UI-225788 with the Employment Appeals Board (EAB). On August 18, 2023, EAB issued EAB Decision 2023-EAB-0868, reversing Order No. 23-UI-225788 and remanding the matter for a hearing to determine whether claimant had good cause to file the late request for hearing and, if so, to conduct a hearing on the merits of decision # 94816.

On October 25, 2023, ALJ Mott conducted a hearing, and on October 26, 2023, issued Order No. 23-UI-239660, dismissing claimant's request for hearing on decision # 94816 as late without good cause and leaving the administrative decision undisturbed. On November 14, 2023, claimant filed an application for review of Order No. 23-UI-239660 with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant's argument to the extent it was based on the record.

**FINDINGS OF FACT:** (1) Claimant had Attention Deficit Hyperactivity Disorder (ADHD). As a result of her ADHD condition, claimant had trouble remembering things unless she made a note or the thing in question was “right in front of [her] face.” Audio Record at 28:24.

(2) On December 22, 2022, the Department mailed decision # 94816 to claimant’s address on file with the Department. Decision # 94816 stated, “You have the right to appeal this decision if you do not believe it is correct. Your request for appeal must be received no later than January 11, 2023.” Exhibit 1 at 2.

(3) On December 28, 2022, claimant received decision # 94816 in the mail. When she received the administrative decision, claimant looked at it and then placed it in her office to go back over later in more detail.

(4) On December 30, 2022, claimant developed a COVID-19 infection. Thereafter, claimant suffered from breathing difficulty, fever, achiness in her head, and severe fatigue. These symptoms left claimant “pretty much unable to do anything physically or mentally.” Audio Record at 22:47.

(5) On January 7, 2023, claimant used the Department’s online claims system to claim a week of unemployment insurance benefits.

(6) On the evening of January 9 and the morning of January 10, 2023, claimant started to feel better. Claimant then “started going through what needed to be done that [she] had not accomplished while [she] was sick” such as bills that needed to be paid or paperwork that needed to be addressed. Audio Record at 24:38.

(7) On the morning of January 12, 2023, claimant went into her office to work on paperwork that needed to be addressed, saw decision # 94816, and realized she had missed the January 11, 2023, deadline to file a timely request for hearing. When claimant received decision # 94816, she had not made a note to remind herself about it, and due to her ADHD symptoms, had forgotten about the administrative decision until she went into her office that morning.

(8) On January 12, 2023, claimant used the Department’s website to file a late request for hearing on decision # 94816.

**CONCLUSIONS AND REASONS:** Order No. 23-UI-239660 is reversed, claimant’s late request for hearing is allowed, and a hearing on the merits of decision # 94816 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.

On December 22, 2022, the Department mailed decision # 94816 to claimant at claimant’s address of record on file with the Department. The 20-day deadline for claimant to file a timely request for hearing

on that decision was January 11, 2023. Claimant did not file a request for hearing on decision # 94816 until January 12, 2023. Accordingly, claimant's request for hearing was late.

The order under review concluded that claimant failed to establish good cause to extend the filing deadline to January 12, 2023. Order No. 23-UI-239660 at 3. The record does not support that conclusion.

Claimant established good cause to extend the filing deadline to January 12, 2023 and filed her request for hearing within a reasonable time. The record shows that claimant's ADHD symptoms caused her to have trouble remembering things unless she made a note or the thing in question was "right in front of [her] face." Audio Record at 28:24. Claimant received decision # 94816 on December 28, 2022, but then placed it in her office to review in further detail later. From there, claimant developed a COVID-19 infection, which caused her to be "pretty much unable to do anything physically or mentally." Audio Record at 22:47. Although claimant's COVID-19 symptoms had diminished by January 9 or 10, 2023, due to her ADHD symptoms, claimant had forgotten about the administrative decision until she went into her office on the morning of January 12, 2023. The combination of claimant's ADHD condition and her symptoms from COVID-19 constituted either a circumstance beyond her reasonable control or rendered her mistake in not filing by January 11, 2023 excusable, such as to establish good cause to extend the filing deadline to January 12, 2023, the day she saw the administrative decision in her office and realized she had missed the timely filing deadline. As claimant filed her late request for hearing on January 12, 2023, the request was filed within a seven-day reasonable time from when the circumstances beyond her control or excusable mistake ceased to exist.

The order under review reasoned that the fact claimant used the Department's online claims system to claim a week of benefits on January 7, 2023 demonstrated that claimant could have also filed a request for hearing on decision # 94816 by the January 11, 2023 deadline, and that her failure to do so was therefore not due to a factor beyond her reasonable control or an excusable mistake. Order No. 23-UI-239660 at 3. However, it is plausible that claimant's memory difficulties from ADHD and physical and mental impairments from COVID-19 would not have affected her ability to make a claim for benefits, because the record shows that claimant had previously made a weekly claim for benefits on December 26, 2022 and therefore was continuously claiming week-by-week at the time of her January 7, 2023 weekly claim. Audio Record at 16:58. In contrast, the duty to file a request for hearing on decision # 94816 by January 11, 2023 was a unique requirement that did not occur in weekly intervals and so was more likely to be forgotten by someone experiencing memory difficulties due to ADHD and COVID-19, as claimant was at the time.

Accordingly, claimant established good cause to extend the deadline to file a request for hearing on decision # 94816 to January 12, 2023. Claimant's late request for hearing is therefore allowed, and claimant is entitled to a hearing on the merits of decision # 94816.

**DECISION:** Order No. 23-UI-239660 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: December 28, 2023**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-239660 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

**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.