

**EMPLOYMENT APPEALS BOARD DECISION**  
**2024-EAB-0037**

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

**PROCEDURAL HISTORY:** On October 14, 2022, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was not eligible to receive PUA benefits effective July 5, 2020. On November 3, 2022, the October 14, 2022 PUA determination became final without claimant having filed a request for hearing. On November 10, 2022, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on April 4, 2023 issued Order No. 23-UI-220917, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by April 18, 2023. On April 24, 2023, Order No. 23-UI-220917 became final without claimant having filed a response to the appellant questionnaire or an application for review with the Employment Appeals Board (EAB). On November 1, 2023, claimant filed a submission that was styled as a request to reopen, but was treated as a late response to the appellant questionnaire and a late application for review of Order No. 23-UI-220917. On December 11, 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 December 29, 2023, claimant re-filed, with some additional attachments,<sup>1</sup> his November 1, 2023 submission that was styled as a request to reopen, but was treated as a late response to the appellant

<sup>1</sup> Claimant's December 29, 2023 submission contained the following additional attachments compared to claimant's November 1, 2023 submission: an updated cover letter, ALJ Kangas's December 11, 2023 letter, and a hearing order issued by an ALJ in a different case involving claimant.

questionnaire and a late application for review of Order No. 23-UI-220917. This matter comes before EAB based upon claimant's November 1, 2023 application for review of Order No. 23-UI-220917.

**EVIDENTIARY MATTER:** EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is claimant's November 1, 2023, 2023 submission, which was treated in part as a response to the appellant questionnaire. This submission is marked as EAB Exhibit 1, and a copy provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 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 exhibit will remain in the record.

**FINDINGS OF FACT:** (1) On August 10, 2022, claimant used the Department's online hearing request web form to request a hearing on an administrative decision that concluded claimant had voluntarily quit working for an employer without good cause.

(2) On October 14, 2022, the Department mailed the October 14, 2022 PUA determination to claimant's address on file with the Department. The October 14, 2022 PUA determination stated, "You have the right to appeal this decision if you do not believe it is correct. Your request for appeal must be received by November 3, 2022." Exhibit 1 at 2.

(3) Claimant did not receive the October 14, 2022 PUA determination. On November 10, 2022, claimant called the Department to inquire about the status of his hearing request on the August 10, 2022 voluntary quit administrative decision. During the call, the Department representative informed claimant of the October 14, 2022 PUA determination and claimant learned of its existence for the first time.

(4) On November 10, 2022, claimant filed a late request for hearing on the October 14, 2022 PUA determination.

(5) On April 4, 2023, OAH mailed Order No. 23-UI-220917 to claimant's address on file with OAH. Order No. 23-UI-220917 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. 23-UI-220917 at 2. Order No. 23-UI-220917 also stated on its certificate of mailing that "Any party may appeal this Order by filing a Request for Review with the Employment Appeals Board no later than April 24, 2023."

(6) On April 23, 2023, claimant made a submission using the Department's online hearing request web form that he intended to be treated as an application for review of Order No. 23-UI-220917. The Department failed to process claimant's submission as an application for review of Order No. 23-UI-220917 and, as a result, EAB did not receive claimant's submission. Claimant was not aware that EAB had not received his April 23, 2023 submission.

(7) On October 26, 2023, during a hearing before an ALJ on a separate matter, claimant learned from the ALJ that there was no record of claimant having an application for review on file with EAB for Order No. 23-UI-220917 and claimant came to suspect that his April 23, 2023 application for review using the Department's hearing request web form, had not been received by EAB.

(8) On November 1, 2023, claimant filed a submission that was styled as a request to reopen, but which EAB treated as a late response to the appellant questionnaire and a late application for review of Order No. 23-UI-220917.

**CONCLUSIONS AND REASONS:** Claimant’s late application for review is allowed. Order No. 23-UI-220917 is reversed, claimant’s late request for hearing is allowed, and a hearing on the merits of the October 14, 2022 PUA Determination is required.

**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. 23-UI-220917 was due by April 24, 2023. Because claimant did not file his application for review until November 1, 2023, the application for review was late.

On April 23, 2023, claimant used the Department’s online hearing request web form to file a submission that claimant intended to be treated as an application for review of Order No. 23-UI-220917. EAB did not receive claimant’s submission because the Department failed to process claimant’s submission as an application for review of Order No. 23-UI-220917. Claimant had used the Department’s online hearing request web form successfully in the past to appeal administrative decisions issued by the Department, such as the August 10, 2022 voluntary quit administrative decision, and had no reason to know that using the Department’s hearing request web form would result in the Department not processing his application for review and lead to EAB not receiving it. The Department’s failure to process the application for review was a circumstance beyond claimant’s reasonable control that caused him to take no further action regarding his application for review of Order No. 23-UI-220917. This circumstance ceased to exist on October 26, 2023, when, during a hearing before an ALJ on a separate matter, claimant gained information that caused him to suspect that his April 23, 2023 submission using the Department’s hearing request web form had not been received by EAB. Within seven days thereafter, on November 1, 2023, claimant filed his late application for review of Order No. 23-UI-220917, which was styled as a request to reopen.

Accordingly, the Department’s failure to process the April 23, 2023 submission as an application for review and EAB’s non-receipt of it was a factor beyond claimant’s reasonable control that prevented a timely filing. This factor ceased to exist on October 26, 2023, and claimant filed his late application for review on November 1, 2023, which was within a seven-day reasonable time. Thus, claimant established good cause to extend the application for review filing deadline and filed within a reasonable time. The late application for review is therefore 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.

The deadline for claimant to file a timely request for hearing on the October 14, 2022 PUA determination was November 3, 2022. Claimant did not file a request for hearing until November 10, 2022. Accordingly, claimant’s request for hearing was late.

In claimant’s declaration included as part of EAB Exhibit 1, claimant asserted that he was not aware of the October 14, 2022 PUA determination until he called the Department on November 10, 2022 to check the status of his appeal of a different administrative decision. EAB Exhibit 1 at 6-7. Claimant learned of the October 14, 2022 PUA determination for the first time during the call and filed a request for hearing on the PUA determination the same day. EAB Exhibit 1 at 7. This evidence supports the inference that claimant did not receive the October 14, 2022 PUA determination in the mail. Claimant’s failure to receive the PUA determination was a circumstance beyond his reasonable control that prevented claimant from requesting a hearing in a timely manner. That circumstance ceased on November 10, 2022, when claimant learned of the October 14, 2022 PUA determination during a telephone conversation with a Department representative. On the same day, claimant made a request for hearing on the October 14, 2022 PUA determination.

Accordingly, claimant established good cause to extend the deadline to file a request for hearing on the October 14, 2022 PUA determination and did so within a reasonable time. Order No. 23-UI-220917 therefore is reversed, claimant’s late request for hearing is allowed, and claimant is entitled to a hearing on the merits of the October 14, 2022 PUA determination.

**DECISION:** Order No. 23-UI-220917 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service:** February 7, 2024

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-220917 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.

**Employment Appeals Board - 875 Union Street NE | Salem, OR 97311**  
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