

**EMPLOYMENT APPEALS BOARD DECISION**  
**2024-EAB-0417**

*Affirmed*  
*Late Request for Hearing Dismissed*

**PROCEDURAL HISTORY:** On September 28, 2022, 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 an overpayment of \$5,227 in regular unemployment insurance (regular UI) benefits and \$8,400 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay to the Department, a \$4,088.10 monetary penalty, and a 52-week penalty disqualification from future benefits (decision # 193314). On October 18, 2022, decision # 193314 became final without claimant having filed a request for hearing. On March 20, 2023, claimant filed a late request for hearing on decision # 193314.

ALJ Kangas considered claimant's request, and on August 2, 2023, issued Order No. 23-UI-232182, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by August 16, 2023. On August 14, 2023, claimant filed a timely response to the appellant questionnaire. On January 22, 2024, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 23-UI-232182 was vacated and that a new hearing would be scheduled to determine whether claimant had good cause to file the late request for hearing and, if so, the merits of decision # 193314. On February 26, 2024, ALJ Monroe conducted a hearing at which the employer failed to appear, and on April 12, 2024, issued Order No. 24-UI-252217, dismissing claimant's request for hearing as late without good cause. On May 1, 2024, claimant filed an application for review of Order No. 24-UI-252217 with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant did not declare 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). The argument also 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 as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

**FINDINGS OF FACT:** (1) In 2020, claimant filed an initial claim for regular UI benefits. The Department determined claimant had a monetarily valid claim for benefits. Claimant claimed benefits

each week for much of 2020. Claimant stopped claiming benefits in late 2020. Claimant's address of record on file with the Department during this time was a P.O. Box address in Veneta, Oregon.<sup>1</sup>

(2) In October 2021, claimant moved to an address in Springfield, Oregon. Claimant did not update her address information with the Department when she moved. In late October 2021, claimant sent a communication to the Department in which she listed as her address as both the Springfield address and the Veneta address.

(3) On September 28, 2022, the Department mailed decision # 193314 to claimant's address on file with the Department, which was the Veneta address. Decision # 193314 stated, "To be timely, any appeal from this decision must be filed on or before OCTOBER 18, 2022." Exhibit 1 at 1 (emphasis in original). Decision # 193314 also provided a P.O. Box address and two phone numbers for contacting the Department, and stated, "If you do not understand this decision, contact the Investigations Unit immediately at 503-947-1995." Exhibit 1 at 1. Decision # 193314 assessed an overpayment and a monetary penalty that claimant was required to repay. Exhibit 1 at 2.

(4) The U.S. Postal Service returned decision # 193314 as undeliverable and claimant did not receive the administrative decision.

(5) The Department pursued garnishment of claimant's wages to recover the overpayment assessed by decision # 193314. In late December 2022, the Department sent a notice of wage garnishment to claimant at her Springfield address. Claimant received the notice.

(6) On January 9, 2023, claimant called the Department to inquire about the notice. During the call, the Department representative told claimant about decision # 193314 and that claimant could file a late request for hearing on the decision. During either that call or a separate call to the Department that claimant made in early January 2023, claimant requested information regarding the wage garnishment.

(7) On February 15, 2023, the Department responded to claimant's request for information and provided claimant with a copy of decision # 193314, among other items.

(8) After she received decision # 193314 on February 15, 2023, claimant did not immediately file a request for hearing. Claimant did not immediately do so because she "thought that there was a specific way that [she] was supposed to do it" and "didn't know what to do[.]" Transcript at 26. As "more time passed by [claimant] got . . . anxious about it[.]" Transcript at 26. Thereafter, on March 20, 2023, claimant filed a request for hearing on decision # 193314 using the Department's Contact Us web form.

**CONCLUSIONS AND REASONS:** Claimant's late request for hearing is dismissed.

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

---

<sup>1</sup> EAB has taken notice of the facts contained in this paragraph, which are contained in Employment Department records. OAR 471-041-0090(1). Any party that objects to our taking notice of this information 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 noticed fact will remain in the record.

(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. Under OAR 471-040-0010(1)(b)(A), “good cause” does not include failure to receive a document due to not notifying the Department or OAH of an updated address while the person is claiming benefits or if the person knows, or reasonably should know, of a pending appeal.

The deadline to file a request for hearing on decision # 193314 was October 18, 2022. Because claimant did not file her request for hearing on decision # 193314 until March 20, 2023, the request for hearing was late.

The record shows that claimant established good cause to extend the deadline to file her request for hearing on decision # 193314 to February 15, 2023. However, claimant failed to file within a reasonable time of that date. This is so because claimant filed her request for hearing on March 20, 2023, which was more than seven days after February 15, 2023. As such, claimant did not fulfill the criteria necessary to allow her late request for hearing and the request for hearing must be dismissed.

Claimant established good cause to extend the deadline to file her request for hearing to February 15, 2023. On September 28, 2022, the Department mailed decision # 193314 to claimant’s Veneta address. The U.S. Postal Service returned the decision as undeliverable, and claimant therefore did not receive it. Claimant’s failure to receive the administrative decision was a factor beyond her reasonable control that prevented a timely filing. Although, under OAR 471-040-0010(1)(b)(A), “good cause” does not include failure to receive a document due to not notifying the Department of an updated address while the person is claiming benefits, this provision does not apply in claimant’s situation. Claimant last claimed benefits in late 2020, then moved to the Springfield address in October 2021. Although claimant did not update her address with the Department at that time, she was no longer claiming benefits, so her failure to notify the Department of an updated address does not implicate OAR 471-040-0010(1)(b)(A).

Claimant received a garnishment notice in late December 2022 and, on January 9, 2023, learned of the existence of decision # 193314 and her right to file a late request for hearing on it. However, the circumstances beyond claimant’s control that prevented a timely filing persisted until February 15, 2023, when claimant received a copy of decision # 193314 in response to her request for information. At that point, claimant was advised in writing of her right to appeal the administrative decision, as the decision contained the statement, “To be timely, any appeal from this decision must be filed on or before OCTOBER 18, 2022.” Exhibit 1 at 2. Claimant also possessed the knowledge that she could make a late hearing request on the decision as a Department representative advised her of that during the January 9, 2023, conversation. For these reasons, upon receipt of decision # 193314 on February 15, 2023, the factors beyond claimant’s reasonable control ceased to exist.

Claimant failed to file her late request for hearing within a reasonable time. OAR 471-040-0010(3) defines “reasonable time” as seven days after the circumstances that prevented a timely filing ceased to exist. Claimant filed her hearing request on March 20, 2023, which was more than seven days after February 15, 2023. Claimant testified that she did not immediately file a request for hearing upon receiving a copy of decision # 193314 because she “thought that there was a specific way that [she] was supposed to do it” and she “didn’t know what to do[.]” Transcript at 26. However, decision # 193314 provided claimant with contact information for the Department, which claimant could have used to seek clarifying information as to the different methods of filing a request for hearing. Moreover, the record

shows that claimant used the Contact Us web form to file a hearing request on March 20, 2023, after “more time passed” and claimant “got . . . anxious about it[.]” Transcript at 26. Claimant did not establish that anything prevented her from using the Contact Us web form to file a hearing request within seven days of receiving a copy of the decision on February 15, 2023.

For these reasons, claimant failed to file her late request for hearing within a reasonable time. Claimant’s late request for hearing on decision # 193314 is therefore dismissed under ORS 657.875 and OAR 471-040-0010.

**DECISION:** Order No. 24-UI-252217 is affirmed.

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

**DATE of Service: June 13, 2024**

**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.surveymzmo.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.