

**EMPLOYMENT APPEALS BOARD DECISION**  
**2024-EAB-0158**

*Reversed*  
*Request for Hearing Timely*  
*Merits Hearing Required*

**PROCEDURAL HISTORY:** On July 7, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant failed to provide information in accordance with the Department's rules and was therefore ineligible to receive unemployment insurance benefits for the week of June 4, 2023, through June 10, 2023 (week 23-23) and until the reason for the denial ended. On July 11, 2023, claimant filed a timely request for hearing which was not forwarded to the Office of Administrative Hearings (OAH), as discussed in further detail below. The Department therefore believed the July 7, 2023, administrative decision to have become final on July 27, 2023.

On November 21, 2023, claimant filed a second request for hearing. ALJ Kangas considered this request, and on December 5, 2023, issued Order No. 23-UI-242603, dismissing claimant's November 21, 2023, request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by December 19, 2023. On December 15, 2023, claimant filed a timely response to the appellant questionnaire. On January 18, 2024, OAH mailed a letter to claimant stating that Order No. 23-UI-242603 was vacated and that a hearing would be scheduled to determine the timeliness of claimant's request for hearing and, if timely or otherwise allowed, the merits of the July 7, 2023, administrative decision. On January 31, 2024, ALJ Blam conducted a hearing at which the Department failed to appear, and on February 2, 2024, issued Order No. 24-UI-247196, re-dismissing claimant's request for hearing as late and leaving the July 7, 2023, administrative decision undisturbed. On February 9, 2024, claimant filed an application for review of Order No. 24-UI-247196 with the Employment Appeals Board (EAB).

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

**FINDINGS OF FACT:** (1) On July 7, 2023, the Department mailed the July 7, 2023, administrative decision to claimant's mailing address of record. The July 7, 2023, administrative decision stated, "If you do not agree with this decision, see the enclosed information for your appeal rights . . . Any appeal from this decision must be filed on or before JUL 27, 2023, to be timely." Exhibit 1 at 1. Claimant received the July 7, 2023, administrative decision shortly after it was mailed.

(2) On July 10, 2023, the Department ended the denial of benefits imposed by the July 7, 2023, administrative decision, effective the week ending July 15, 2023 (week 27-23). Claimant claimed benefits for the weeks including June 4, 2023, through July 28, 2023 (weeks 23-23 through 28-23). Claimant was not paid benefits for these weeks, but received waiting week credit for week 28-23.<sup>1</sup>

(3) On July 10 or 11, 2023, claimant submitted a request for hearing using the Department's website. The Department received the request but did not forward it to OAH.

(4) On July 11, 2023, claimant spoke on the phone with a Department representative. The representative's note of that call stated, in relevant part, "Confirmed UI appeals # 730994 . . . Expl that wk 28-23 will be [the waiting week] and to keep claiming and [actively seeking work]."<sup>2</sup>

(5) On July 12, 2023, claimant again spoke on the phone with a Department representative. The representative's note of that call stated, "PTC Advised clmnt that appeals request received. Advised will be contacted with hearing date. Advised can claim going forward while waiting for hearing[.]"<sup>3</sup> Claimant understood from this conversation that his request for hearing on the July 7, 2023, administrative decision had been filed.

(6) On November 21, 2023, claimant wrote to the Department using its website to "follow-up" regarding "request #730994 'Appeal for benefits.'" Exhibit 2 at 2. The Department considered this a late request for hearing on the July 7, 2023, administrative decision and forwarded it to OAH.

**CONCLUSIONS AND REASONS:** Claimant's request for hearing was timely filed, and a hearing on the merits of the July 7, 2023, administrative decision 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.

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<sup>1</sup> EAB has taken notice of these facts which are contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). 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 facts will remain in the record.

<sup>2</sup> EAB has taken notice of this fact which is 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.

<sup>3</sup> EAB has taken notice of this fact which is 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.

The order under review concluded that claimant did not file a request for hearing prior to the July 27, 2023, filing deadline, and that his belief that he had filed such a request did not constitute good cause to file the November 21, 2023 request for hearing late. Order No. 24-UI-247196 at 3. The record does not support these conclusions, but instead shows that claimant filed a timely request for hearing on July 11, 2023.

Claimant testified that he believed he filed his initial request for hearing online “around mid to late July” Audio Record at 18:04 to 18:28. Claimant explained that on July 10, 2023, he discussed his claim by email with a Department representative who dealt only with monetary and wage issues, and that the representative advised him to contact the Department regarding his ineligibility for benefits imposed by the July 7, 2023, administrative decision. Audio Record at 11:30 to 11:54. Claimant phoned the Department on July 11, 2023. Claimant testified he was told that his benefits were “approved” and that his waiting week would begin July 16, 2023 (week 28-23), but that he maintained he “was due” benefits beginning the week of June 10, 2023 (week 23-23). Transcript at 11:55 to 12:20. Claimant also testified that he “told them I wanted to file the appeal because I was owed the five weeks.” Audio Record at 16:39 to 17:00. This testimony is consistent with the Department’s records, which indicate that an online request for hearing was received by July 11, 2023, and that claimant was explicitly told, on July 12, 2023, the request had been received and that claimant “will be contacted with the hearing date.”

It is unclear why the Department did not forward claimant’s July 11, 2023, request for hearing to OAH. Regardless of the reason for OAH’s failure to receive and process claimant’s initial hearing request, the record shows that claimant filed—and that the Department’s records acknowledge claimant having filed—his request for hearing on July 11, 2023, and the facts have been found accordingly. Because the request for hearing was due by July 27, 2023, the request for hearing was timely, and a hearing on the merits of the July 7, 2023, administrative decision is required.

**DECISION:** Order No. 24-UI-247196 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:** March 13, 2024

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-247196 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 ໄດ້ ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

**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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