

**EMPLOYMENT APPEALS BOARD DECISION**  
**2024-EAB-0211**

*Reversed*  
*Request to Reopen Allowed*  
*Merits Hearing Required*

**PROCEDURAL HISTORY:** On November 20, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged by the employer, but not for misconduct, and was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # 72649). The employer filed a timely request for hearing. On December 8, 2023, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for December 22, 2023. On December 22, 2023, ALJ Chiller conducted a hearing at which claimant failed to appear, and on December 29, 2023 issued Order No. 23-UI-244408, reversing decision # 72649 by concluding that claimant was discharged for misconduct and disqualified from receiving benefits effective August 27, 2023. Order No. 23-UI-244408 stated that the deadline to file an application for review of Order No. 23-UI-244408, or a request to reopen the December 22, 2023 hearing, was 20 days from the date Order No. 23-UI-244408 was issued, January 18, 2024.

On January 3, 2024, claimant emailed the Department expressing disagreement with, and a desire to challenge, Order No. 23-UI-244408, and therefore expressed a present intent to appeal that ALJ Order. Claimant's email therefore constituted an application for review of Order No. 23-UI-244408 per OAR 471-041-0060(1) (effective May 13, 2019). Pursuant to OAR 471-041-0060(4), the Employment Appeals Board (EAB) treated the application for review as a timely request to reopen the December 22, 2023 hearing because claimant failed to appear at the hearing, and on January 20, 2024, via a response email on the same thread as the January 3, 2024 application for review, claimant provided a written statement setting forth their reasons for missing the hearing.

However, OAH treated claimant's January 20, 2024 response email as a late request to reopen the December 22, 2023 hearing. On February 6, 2024, ALJ Scott issued Order No. 24-UI-247349, which viewed claimant's January 20, 2024 communication as a late request to reopen, and denied the request as late without good cause, leaving Order No. 23-UI-244408 undisturbed. On February 26, 2024, claimant filed an application for review of Order No. 24-UI-247349 with EAB.

**WRITTEN ARGUMENT:** Claimant submitted written arguments on February 26, March 4 and March 7, 2024. EAB did not consider claimant’s February 26 and March 4, 2024 arguments when reaching this decision because claimant did not include a statement declaring that they provided a copy of their arguments to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). Claimant’s March 7, 2024 written argument contained information that was not part of the hearing record and related to a separation notice received from the employer. 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 March 7, 2024 argument to the extent it was based on the record.

The parties may offer new information, such as the separation notice claimant attached to their March 7, 2024 written argument, into evidence at the remand hearing. At that time, it will be determined if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing regarding documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties in advance of the hearing at their addresses as shown on the certificate of mailing for the notice of hearing.

**FINDINGS OF FACT:** (1) On November 20, 2023, the Department issued decision # 72649, which concluded that claimant was discharged by the employer, but not for misconduct, and was not disqualified from receiving unemployment insurance benefits based on the work separation. The employer filed a timely request for hearing. On December 8, 2023, OAH mailed to the parties notice of a hearing on decision # 72649 scheduled for December 22, 2023.

(2) Claimant received the notice of hearing shortly after it was mailed. However, claimant did not understand the hearing notice. Claimant went to their local WorkSource office and asked for an explanation of the hearing notice. Claimant was informed that since they got decision # 72649 “saying that [their] benefits were approved, not to worry about” the notice of hearing. Exhibit 5 at 1. Based on this information, claimant believed that participating in the December 22, 2023 hearing was unnecessary. Exhibit 5 at 1.

(3) On December 22, 2023, ALJ Chiller conducted a hearing on decision # 72649, at which the employer appeared. Claimant failed to appear for the hearing because, based on the information they received from their local WorkSource office, they believed appearing was unnecessary.

(4) On December 29, 2023, ALJ Chiller issued Order No. 23-UI-244408, reversing decision # 72649 by concluding that claimant was discharged for misconduct and disqualified from receiving benefits effective August 27, 2023. Order No. 23-UI-244408 stated that the deadline to file an application for review of Order No. 23-UI-244408 or a request to reopen the December 22, 2023 hearing was 20 days from the date Order No. 23-UI-244408 was issued, January 18, 2024. Order No. 23-UI-244408 at 3-4. Claimant received Order No. 23-UI-244408 shortly after it was issued.

(5) On January 3, 2024, claimant emailed the Department expressing disagreement with, and a desire to challenge, Order No. 23-UI-244408. The January 3, 2024 email identified Order No. 23-UI-244408 by the date it was issued and described it as containing “a number of things that simply are not true,” such

as claimant having made rude comments to customers, which claimant considered to be “mean-spirited, libelous, and making things up to deny [their] benefits.” Exhibit 5 at 3.

(6) On January 17, 2024, a Department representative replied to claimant’s email, explaining that the matter was already referred to OAH. The email also provided information on how to request reopening, and OAH’s contact information.

(7) On January 20, 2024, claimant emailed a response that, among other things, explained why they missed the December 22, 2023 hearing.

(8) OAH considered claimant’s January 20, 2024 response email to be a late request to reopen the December 22, 2023 hearing. On February 6, 2024, ALJ Scott issued Order No. 24-UI-247349, denying the reopen request OAH considered claimant to have filed on January 20, 2024 on the basis that it was filed late without good cause, leaving Order No. 23-UI-244408 undisturbed.

**CONCLUSIONS AND REASONS:** Claimant’s request to reopen the December 22, 2023 hearing on decision # 72649 is allowed, and this case remanded for a reopened hearing and a new order on the merits of decision # 72649.

**Application for Review.** “An application for review may be filed on forms provided by OAH or the Employment Department and other similar offices in other states. Use of the form is not required, provided the applicant requests review of a specific ALJ Order, or otherwise expresses intent to appeal an ALJ Order.” OAR 471-041-0060(1). “An application for review may be filed in person, or by mail, fax, or electronic means to EAB, or any office of the Employment Department, including OAH[.]” OAR 471-041-0070(2).

On January 3, 2024, claimant emailed the Department expressing disagreement with, and a desire to challenge, Order No. 23-UI-244408. *See* Exhibit 5 at 2-3. In the email, claimant referenced Order No. 23-UI-244408, referring to it as a “judgement from 12-29-23,” and described it as containing “a number of things that simply are not true” such as claimant having made rude comments to customers, which claimant considered to be “mean-spirited, libelous, and making things up to deny [their] benefits.” Exhibit 5 at 3.

Per OAR 471-041-0060(1), for claimant’s January 3, 2024 email communication to constitute an application for review, the email needed to have “expresse[d] intent to appeal an ALJ Order.” The January 3, 2024 email met that standard. The email identified Order No. 23-UI-244408, referring to it as a “judgement from 12-29-23[.]” Exhibit 5 at 3. Further, the email detailed a profound disagreement on claimant’s part with the ALJ’s Order, with claimant asserting it contained false information. This is sufficient to show that claimant wished to challenge some of the findings and conclusions of Order No. 23-UI-244408, and demonstrated an intent to appeal the order. For these reasons, claimant’s January 3, 2024 email expressed an intent to appeal Order No. 23-UI-244408 and therefore constituted an application for review.

Having concluded that claimant’s January 3, 2024 email constituted an application for review, the analysis turns to whether EAB is required to treat the application for review as a request to reopen by operation of OAR 471-041-0060(4). Under that provision, except as otherwise stated in OAR 471-041-

0060, “EAB will treat an application for review by a claimant or employer that failed to appear at a hearing as a request to reopen the hearing under ORS. 657.270.” The exceptions to this are found in OAR 471-041-0060(5), which states, “An application for review filed by a claimant or employer that failed to appear at the hearing and whose request for hearing was not dismissed for failure to appear will be treated as an application for review if: (a) The applicant expresses in the application for review that they are not requesting to reopen the hearing, or (b) The application for review does not include a written statement that sets forth the reason(s) for missing the hearing[.]”

Applying OAR 471-041-0060(4) and (5), EAB is required to treat the January 3, 2024 application for review as a request to reopen the December 22, 2023 hearing. Claimant failed to appear at the December 22, 2023 hearing, and because the employer had requested the hearing, the hearing request was not dismissed for claimant’s failure to appear. Further, claimant did not express in their January 3, 2024 application for review that they were not requesting to reopen the December 22, 2023 hearing. Finally, although claimant’s initial January 3, 2024 email did not explain why claimant missed the hearing, the Department replied to the email on January 17, 2024 and claimant then sent a response email on January 20, 2024. In the response email, claimant explained why they missed the December 22, 2023 hearing. Accordingly, because the application for review was filed by claimant, a party who failed to appear at the hearing, and the exceptions set forth under OAR 471-041-0060(5) do not apply, claimant’s January 3, 2024 application for review is required to be treated as a request to reopen.

**Request to Reopen.** 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. “Good cause” exists when the requesting party’s failure to appear at the hearing arose from an excusable mistake or from factors beyond the party’s reasonable control. OAR 471-040-0040(2) (February 10, 2012). The party requesting reopening shall set forth the reason(s) for missing the hearing in a written statement, which the Office of Administrative Hearings (OAH) shall consider in determining whether good cause exists for failing to appear at the hearing. OAR 471-040-0040(3).

The deadline to file a request to reopen the December 22, 2023 hearing was January 18, 2024, 20 days from the date Order No. 23-UI-2444408 was issued. Because claimant filed their request to reopen on January 3, 2024, the request was timely.

The record shows that claimant received the notice scheduling the hearing for December 22, 2023 but did not understand it, and upon taking the notice to their local WorkSource office for further explanation, was told that since claimant got decision # 72649 “saying that [their] benefits were approved, not to worry about” the notice of hearing. Exhibit 5 at 1. Claimant did not appear at the December 22, 2023 hearing because, based on the information received from the WorkSource office, claimant believed that participating in the December 22, 2023 hearing was unnecessary. Exhibit 5 at 1.

The misinformation claimant received from the WorkSource office caused claimant to mistakenly believe that appearance at the hearing was unnecessary, which was an excusable mistake. Claimant’s failure to appear at the hearing therefore arose from an excusable mistake, which is sufficient to establish good cause for failing to appear. For these reasons, claimant established good cause to reopen the December 22, 2023 hearing. Claimant’s request to reopen therefore is allowed, and this case remanded for a reopened hearing and a new order on the merits of decision # 72649.

**DECISION:** Order No. 24-UI-247349 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:** April 5, 2024

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-247349 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**

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**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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