

**EMPLOYMENT APPEALS BOARD DECISION**  
**2024-EAB-0235**

*Reversed & Remanded*

**PROCEDURAL HISTORY AND FINDINGS OF FACT:** On December 8, 2023, the Oregon Employment Department (the Department) served notice of a Wage and Potential Benefit Report (WPBR) concluding that claimant had not worked sufficient hours or earned sufficient wages in her base year to qualify for a monetarily valid unemployment insurance claim. Claimant filed a timely request for hearing. On February 1, 2024, ALJ Roberts convened a hearing, and at the start of the hearing the following discussion occurred:

**Department:** I'm not sure when to exactly bring this up. However, the Department is asking for a continuance to be able to have more time to look into whether or not, um, we have the accurate wages for the claimant. We understand that at this point, we do not. So we are requesting a continuance to, um, be able to ensure that we are able to have the correct wages and hours for the claimant.

**ALJ:** Okay, are you under the impression you are going to be getting corrected wages or additional wages?

**Department:** Yes, your honor.

**ALJ:** Okay, all right, I am going to continue the hearing then. And that would need to, one second here, in order to have a full and fair hearing, the actual or corrected wages would need to be in the record or the amount of those if there are any, determined to be any. Let's see here, I'm just looking at when I have, it would probably have to be a couple of weeks. Do you understand [claimant] what the Employment Department is requesting?

**Claimant:** Yes, I do.

**ALJ:** Okay, and since they believe there may be additional wages or corrected wages that need to be added to your claim, I'm going to go ahead and grant their request for a continuance. If it would be. It would not be any, it would not be of any use for me to issue an order if there is information out there that has not yet been obtained.

Audio Record at 3:26 to 5:02

The ALJ and the parties agreed to reschedule the hearing for February 21, 2024 at 1:30 p.m., and the following discussion occurred:

**ALJ:** So what will happen is [claimant], you will get another notice of hearing. It will be the same access code. It will just give you the updated, um, date and time of February 21st at 1:30. If for some reason, um, everything gets resolved to your satisfaction prior to that date, you can call the Office of Administrative Hearings and withdraw your request for hearing and you will not need to go through a hearing. But if we get to February 21st and you're still, you still believe there are issues on your, whether your claim is valid or invalid that need to be looked at or reviewed on appeal, then that would be the date that we'd do it. February 21st at 1:30. Does that make sense?

**Claimant:** Yes, thank you, your honor.

**ALJ:** Okay, anything from you [Department representative]?

**Department:** No thank you.

**ALJ:** Okay, well thank you both, then. I will go ahead and end this hearing now. We will continue it at February 21 at 1:30 unless [claimant] calls and withdraws her request for hearing if things are, uh, are, come out to her satisfaction. I hope you both have a good rest of your afternoon.

Audio Record at 7:24 to 8:44.

ALJ Roberts then concluded the hearing. On February 1, 2024, the Office of Administrative Hearings (OAH) served notice of a hearing on the December 8, 2023 WPBR scheduled for February 21, 2024. On February 9, 2024, a Department representative emailed OAH advising that claimant withdrew their appeal on February 8, 2024. EAB Exhibit 1 at 1. On February 12, 2024, ALJ Roberts issued Order No. 24-UI-247804, concluding that claimant withdrew their request for hearing and dismissing the hearing request on that basis, leaving the December 8, 2023 WPBR undisturbed. On March 4, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

**EVIDENTIARY MATTER:** EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is a February 9, 2024 email from the Department requesting that claimant's request for hearing on the December 8, 2023 WPBR be dismissed. The email 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.

**CONCLUSIONS AND REASONS:** Order No. 24-UI-247804 is set aside and this matter remanded for a hearing on whether claimant withdrew their request for hearing on the December 8, 2023 WPBR and, if not, the merits of that decision.

ORS 657.270(7)(a)(A) provides, in pertinent part, that "[t]he administrative law judge may dismiss a request for hearing" if "[t]he request for hearing is withdrawn by the requesting party." Similarly, OAR 471-040-0035(1) (August 1, 2004) provides that "An administrative law judge may order that a request

for hearing be dismissed upon request from the appellant to withdraw the request for hearing.” Subpart (2) of that rule provides as follows:

(2) An administrative law judge may order that a request for hearing be dismissed upon request of the Director or the Director’s authorized representative after either one has:

(a) Issued a new or amended determination or decision that grants the appellant that which was placed in issue by the request for hearing; or

(b) Withdrawn or cancelled the determination or decision upon which the request for hearing was based.

OAR 471-040-0035(2).

Order No. 24-UI-247804 improperly dismissed claimant’s hearing request. On February 9, 2024, a Department representative emailed another Department representative as follows:

Please reach out to OAH and let them know that claimant withdrew their appeal on 2/08/24. OED cannot dismiss the hearing since this is a continued hearing.

EAB Exhibit 1 at 1. Later that day, the Department representative who received the initial email emailed an OAH representative stating “Hello, claimant expressed that they wish to withdraw their appeal on case 2024-UI-04300 per below.” EAB Exhibit 1 at 1.

The evidence does not satisfy ORS 657.270(7)(a)(A) or OAR 471-040-0035(1). The email request to withdraw the request for hearing was not conveyed to OAH by claimant, the party who requested the hearing on the December 8, 2023 WPBR, but rather was made by the Department. Although the Department representative’s email asserted that it was claimant’s desire to dismiss their hearing request, development of the record is necessary to determine whether claimant actually wished to withdraw her appeal, and whether she did so knowingly and voluntarily.<sup>1</sup>

Accordingly, Order No. 24-UI-247804 is reversed and this matter remanded for a hearing on whether claimant withdrew their request for hearing on the December 8, 2023 WPBR and, if not, the merits of the WPBR.

Note that Department records suggest that on or about February 20, 2024, the Department issued an administrative decision (decision # 143535), denying claimant a week of benefits on the basis that the week was claimed prior to the first effective week of claimant’s initial claim.<sup>2</sup> At the remand hearing,

---

<sup>1</sup> Likewise, OAR 471-040-0035(2) authorizes dismissal upon request from the Department under certain circumstances. However, neither OAR 471-040-0035(2)(a) or (b) are met because there is no evidence that the Department issued a new or amended WPBR that granted that which claimant had placed in issue. Nor is there evidence that the Department withdrew or cancelled the WPBR upon which claimant’s request for hearing was based.

<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.

particularly if it is claimant's desire to withdraw her appeal of the December 8, 2023 WPBR, claimant may wish to clarify whether she intended her March 4, 2024 application for review of this matter to be a request for hearing on decision # 143535. Claimant may also wish to contact the Department to clarify whether she requested a hearing on that administrative decision, or intended to do so via filing their March 4, 2024 application for review in this matter.

**DECISION:** Order No. 24-UI-247804 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 12, 2024

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-247804 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.