

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0242-R

*EAB Decision 2024-EAB-0242 Modified on Reconsideration
Order No. 24-UI-248172 Reversed
Late Request for Hearing Allowed ~ Merits Hearing Required*

*Decisión EAB 2024-EAB-0242 Modificada en Reconsideración
Orden No. 24-UI-248172 Revocada*

Se permite la Solicitud Tardía de Audiencia ~ Se Requiere una Audiencia sobre los Méritos

Esta decisión concluye que concluye que, con base en la reconsideración de la Decisión EAB 2024-EAB-0242, se permite la solicitud tardía de audiencia del reclamante y se remite el asunto para una audiencia sobre los méritos de la decisión # 151156. Partes de esta decisión están traducidas al español. Sin embargo, hay información importante en esta decisión que aparece solo en inglés con respecto a por qué la Junta de Apelaciones de Empleo (EAB, por sus siglas en inglés) decidió permitir la solicitud tardía del reclamante para una audiencia y devolver el asunto a la OAH para otra audiencia. Si necesita interpretación en español de la parte de esta decisión que aparece en inglés, puede obtenerla llamando a la EAB al 503-278-2077 y solicitando un intérprete de español.¹

PROCEDURAL HISTORY: On March 19, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving unemployment insurance benefits effective June 21, 2020 (decision # 151156). On April 8, 2021, decision # 151156 became final without claimant having filed a request for hearing. On February 7, 2024, claimant filed a late request for hearing on decision # 151156.

¹ This decision concludes that on reconsideration of EAB Decision 2024-EAB-0242, claimant's late request for hearing is allowed and the matter is remanded for a hearing on the merits of decision # 151156. Portions of this decision are translated into Spanish. However, there is important information in this decision that appears only in English regarding why the Employment Appeals Board (EAB) determined that the matter should be remanded for further proceedings. If you require Spanish interpretation of the portion of this decision that appears in English, you can obtain that by calling EAB at 503-278-2077 and requesting a Spanish interpreter.

ALJ Kangas considered claimant's request, and on February 15, 2024, issued Order No. 24-UI-248172, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by February 29, 2024. On March 5, 2024, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 24-UI-248172 with the Employment Appeals Board (EAB).

On April 17, 2024, EAB issued EAB Decision 2024-EAB-0242, setting aside Order No. 24-UI-248172 and remanding the matter for a hearing to determine whether claimant's late request for hearing should be allowed and, if so, the merits of decision # 151156. The remand hearing has not yet taken place. On its own motion, EAB has reconsidered EAB Decision 2024-EAB-0242. This decision is issued pursuant to EAB's authority under ORS 657.290(3).

LA HISTORIA DEL CASO Y CONCLUSIONES DE HECHO: *El 19 de marzo de 2021, el Departamento de Empleo de Oregón (el Departamento) mandó por correo una decisión administrativa que concluye que el reclamante renunció voluntariamente al trabajo sin una buena causa y, por lo tanto, fue descalificado para recibir beneficios del seguro de desempleo a partir del 21 de junio de 2020 (decisión # 151156). El 8 de abril de 2021, la decisión # 151156 se convirtió en final sin que el reclamante hubiera presentado una solicitud de audiencia. El 7 de febrero de 2024, el reclamante presentó una solicitud tardía de audiencia sobre la decisión # 151156. ALJ Kangas consideró la solicitud del reclamante y, el 15 de febrero de 2024, emitió la Orden No. 24-UI-248172, desestimando la solicitud de audiencia del reclamante por considerarla tardía, sujeto al derecho del reclamante a renovar la solicitud respondiendo a un cuestionario del apelante antes del 29 de febrero de 2024. El 5 de marzo de 2024, el reclamante presentó una respuesta tardía al cuestionario del apelante y una solicitud oportuna de revisión de la Orden No. 24-UI-248172 ante la Junta de Apelaciones de Empleo (EAB).*

El 17 de abril de 2024, EAB emitió la Decisión EAB 2024-EAB-0242, anulando la Orden No. 24-UI-248172 y remitiendo el asunto para una audiencia para determinar si se debe permitir la solicitud tardía de audiencia del reclamante y, de ser así, sobre los méritos de la decisión # 151156. Todavía no se ha celebrado la audiencia. EAB decidió reconsiderar la Decisión EAB 2024-EAB-0242. Esta decisión se emite de conformidad con la autoridad de EAB bajo ORS 657.290(3).

FINDINGS OF FACT: (1) Decision # 151156, mailed to claimant's address of record on file with the Department on March 19, 2021, stated, "You have the right to appeal this decision if you do not believe it is correct. Your request for appeal must be received no later than April 8, 2021." Exhibit 1 at 2.

(2) Decision # 151156 was written in both English and Spanish, except for the "Findings" section, which appeared only in English. Exhibit 1 at 1. Decision # 151156 did not state in Spanish that the decision contained a section which had not been translated to Spanish. Exhibit 1 at 1. The Department was aware prior to issuing decision # 151156 that claimant's primary language was Spanish.

(3) Decision # 151156 also stated, "If you were paid benefits for any week covered by this decision, you may have to pay us back. You'll get information about how much you owe and how to pay us back, after the appeal period." Exhibit 1 at 2. Decision # 151156 did not state which weeks were affected by the disqualification, nor did it state the amount of benefits overpaid to claimant those weeks, or penalties that might be assessed.

(4) On January 26, 2024, the Department issued decision # 195019, concluding, in relevant part, that claimant was liable to repay \$1,080 in benefits and assessing a \$162 monetary penalty and 52-week disqualification from future benefits because of the disqualification imposed by decision # 151156.² Claimant had not previously been informed of the amount of the overpayment or that penalties would be assessed.

(5) On February 7, 2024, claimant filed a request for hearing, citing his disagreement with the overpayment. Exhibit 2 at 2. The request was construed as a timely request for hearing on decision # 195019 and a late request for hearing on decision # 151156. Claimant's appeal of decision # 195019 has been remanded by EAB to the Office of Administrative Hearings (OAH) for further proceedings to accompany the remand hearing on this appeal (EAB Decision 2024-EAB-0379).³

CONCLUSIONS AND REASONS: EAB Decision 2024-EAB-0242 is modified on reconsideration. Order No. 24-UI-248172 is set aside, claimant's late request for hearing on decision # 151156 is allowed, and a hearing on the merits of that decision is required.

Reconsideration. ORS 657.290(3) authorizes EAB, upon its own motion, to reconsider any previous EAB decision, including "the making of a new decision to the extent necessary and appropriate for the correction of previous error of fact or law." EAB has reconsidered EAB Decision 2024-EAB-0242 on its own motion and, on reconsideration, modifies that decision as explained herein.

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 to file a request for hearing on decision # 151156 was April 8, 2021. Because claimant did not file his request for hearing until February 7, 2024, the request for hearing was late. In claimant's appellant questionnaire response, claimant explained, in Spanish and translated into English, that he did not receive decision # 151156 until "January 2023." EAB Exhibit 1 at 3. Claimant also stated the reason he did not file his request for hearing on decision # 151156 by the appeal deadline was because he "never received any information." EAB Exhibit 1 at 3. This suggests that claimant did not receive decision # 151156 when mailed and was unaware of its issuance until he received the resulting overpayment decision, decision # 195019, in late January or early February 2024. The timing of claimant's request for hearing was within the timely filing period for decision # 195019 and suggests that claimant was likely referring to receiving decision # 195019, rather than decision # 151156, and that

² EAB has taken notice of this fact which is 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 fact will remain in the record.

³ 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.

he intended to write January 2024 rather than January 2023 in his questionnaire response. If claimant never received decision # 151156 in the mail, this, more likely than not, was a factor beyond claimant's reasonable control that prevented timely filing of a request for hearing on that decision. This factor would not have ceased until claimant's February 7, 2024 request for hearing was filed and construed as a late request for hearing on decision # 151156.

Moreover, even if claimant received decision # 151156 shortly after it was mailed, the record suggests that factors beyond his reasonable control prevented timely filing of his request for hearing on that decision. OAR 471-040-0010(1)(b)(B) provides that "[n]ot understanding the implications of a decision or notice when received" does not constitute good cause to extend the deadline for timely filing a request for hearing. That rule notwithstanding, the right to due process afforded by the Fourteenth Amendment to the U.S. Constitution requires the Department's administrative decisions to provide adequate notice of the decision's implications on a claimant's right to benefits within the timeframe to appeal the decision.⁴

This question of due process arises when a decision is issued to a person only able to read and understand a language other than English. If such a decision is only partially translated into the other language, and does not contain a notice in the other language stating that portions of the decision have *not* been translated and assistance in reading it should therefore be obtained, the decision likely provides inadequate notice to that recipient.⁵ A person who is only able to read and understand a language other than English receiving a partially translated decision might not be aware that they have not received a full translation of the decision, and would not be alerted to the need to seek assistance in understanding it if this was not disclosed.

Here, the portion of decision # 151156 not translated to Spanish concluded that claimant "quit work because [he] got upset when [he] was told to put [his] cell phone away and walked off the job," and that this did not constitute good cause for leaving work. Exhibit 1 at 2. At the hearing on decision # 195019, claimant denied this occurred, testifying that he quit work by walking off the job, but for entirely different reasons.⁶ If claimant received decision # 151156 but was only able to understand that the Department concluded that he had voluntarily quit working for the employer, which he did not disagree with, it can be inferred that he decided not to request a hearing to contest the decision because he was unaware that factual findings had been made with which he disagreed, due to that portion of the decision being written only in English. Drafting the administrative decision in this fashion was a factor beyond claimant's reasonable control, as claimant had made the Department aware that his primary language was Spanish. Claimant's lack of understanding of this portion of decision # 151156 was therefore a factor beyond his reasonable control that, more likely than not, caused him not to file a timely request

⁴ U.S. Const. amend. XIV, §1 provides, in relevant part, "[N]or shall any State deprive any person of life, liberty, or property, without due process of law[.]"

⁵ See *Casillas v. Gerstenfeld*, No. 22CV18836 (Mult. Co. Cir. Ct. Apr. 5, 2024) Letter Opinion on Cross Motions for Summary Judgment at 9.

⁶ 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.

for hearing on the decision. This factor did not cease until claimant filed his late request for hearing on February 7, 2024.

Further, while decision # 151156 stated that claimant was disqualified from receiving benefits effective June 21, 2020, it did not identify what benefit weeks were impacted by the disqualification or the amount (or approximation) of the overpayment or penalties that could result from this disqualification. In order for claimant to have meaningfully understood the implications of decision # 151156, due process required the Department to inform claimant of those implications resulting from the retroactive change in his benefit entitlement *during the period in which claimant could have timely requested a hearing on that administrative decision*. In other words, because the Department did not notify claimant of the amount, or approximation thereof, of the overpayment and penalties that might result from decision # 151156's disqualification from benefits, claimant was unable to make an informed decision as to "whether to spend the time and resources challenging the decision."⁷ This failure to provide claimant with due process constituted a factor beyond his reasonable control that caused claimant not to file a timely request for hearing. This factor did not cease until claimant received decision # 195019, which more fully described the implications of decision # 151156. It is unclear from the record when precisely claimant received decision # 195019 after it was mailed January 26, 2024, but it can reasonably be inferred, based on the timing of his request for hearing on that decision, that it occurred no more than seven days prior to February 7, 2024. Therefore, this factor ceased within seven days of claimant filing his late request for hearing.

For these reasons, claimant has shown good cause to extend the time to file a request for hearing on decision # 151156 to February 7, 2024. His late request for hearing was filed within a "reasonable time" after the factors that prevented timely filing ceased. Accordingly, the request for hearing is allowed and a hearing on the merits of decision # 151156 is required. Because the outcome of this merits hearing may affect claimant's ongoing appeal of decision # 195019, it should accompany the remand hearing on that appeal.

DECISION: EAB Decision 2024-EAB-0242 is modified on reconsideration. Order No. 24-UI-248172 is set aside, claimant's late request for hearing on decision # 155156 is allowed, and this matter remanded for a hearing on the merits of that decision.

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

DATE of Service: May 24, 2024

FECHA de Servicio: 24 de mayo de 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-248172 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

⁷ See *Casillas v. Gerstenfeld*, No. 22CV18836 (Mult. Co. Cir. Ct. Apr. 5, 2024) Letter Opinion on Cross Motions for Summary Judgment at 10-11; See also generally *Mullane v. Central Hanover Bank & Trust Co.*, 339 US 306 (1950).

***NOTA:** La falta de cualquier parte de presentarse a la audiencia sobre la remisión no reinstalará la Orden de la Audiencia No. 24-UI-248172, ni devolverá esta orden a la EAB. Solamente una aplicación oportuna para revisión de la orden subsiguiente de la nueva audiencia volverá este caso a la EAB.*

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***NOTA:** Usted puede apelar esta decisión presentando una solicitud de revisión judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) dentro de los 30 días siguientes a la fecha de notificación indicada arriba. Vea ORS 657.282. Para obtener formularios e información, puede escribir a la Corte de Apelaciones de Oregon, Sección de Registros (Oregon Court of Appeals/Records Section), 1163 State Street, Salem, Oregon 97310 o visite el sitio web en courts.oregon.gov. En este sitio web, hay información disponible en español.*

Por favor, ayúdenos mejorar nuestros servicios completando un formulario de encuesta sobre nuestro servicio de atención al cliente. Para llenar este formulario, puede visitar <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. Puede acceder a la encuesta usando una computadora, tableta, o teléfono inteligente. Si no puede llenar el formulario sobre el internet, puede comunicarse con nuestra oficina para una copia impresa de la encuesta.



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.

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