

**EMPLOYMENT APPEALS BOARD DECISION**  
**2024-EAB-0254-R**

*Request for Reconsideration Allowed*  
*EAB Decision 2024-EAB-0254 Reversed on Reconsideration*  
*Late Application for Review Allowed*  
*Order No. 24-UI-246564 Reversed & Remanded*

**PROCEDURAL HISTORY AND FINDINGS OF FACT:** On December 18, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant had failed to provide information in accordance with the Department's rules and therefore was ineligible to receive unemployment insurance benefits for the week of November 19, 2023, through November 25, 2023 (week 47-23) and until the reason for the denial had ended (decision # 92604). On January 8, 2024, decision # 92604 became final without claimant having filed a request for hearing. On January 16, 2024, claimant filed a late request for hearing on decision # 92604. ALJ Kangas considered claimant's request, and on January 26, 2024, issued Order No. 24-UI-246564, 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 9, 2024. On February 15, 2024, Order No. 24-UI-246564 became final without the Office of Administrative Hearings or the Employment Appeals Board (EAB) having received a response to the appellant questionnaire or an application for review. On February 26, 2024, the Office of Administrative Hearings received claimant's response to the appellant questionnaire and application for review of Order No. 24-UI-246564. On March 7, 2024, ALJ Kangas mailed a letter stating that the Office of Administrative Hearings would not consider claimant's questionnaire response or issue another order regarding this matter because the questionnaire response was late. On March 29, 2024, EAB issued EAB Decision 2024-EAB-0254, dismissing without prejudice claimant's application for review as late. On April 18, 2024, claimant filed a timely request for reconsideration of EAB Decision 2024-EAB-0254. This decision is issued pursuant to EAB's authority under ORS 657.290(3).

**CONCLUSIONS AND REASONS:** Claimant's request for reconsideration of EAB Decision 2024-EAB-0254 is allowed. EAB Decision 2024-EAB-0254 is reversed on reconsideration. Claimant's application for review of Order No. 24-UI-246564 is allowed as timely filed. Order No. 24-UI-246564 is reversed, and this matter remanded for a hearing on whether claimant's late request for hearing on decision # 92604 should be allowed and, if so, the merits of that decision.

**Reconsideration.** ORS 657.290(3) authorizes the Employment Appeals Board to reconsider any previous decision of the Employment Appeals Board, including “the making of a new decision to the extent necessary and appropriate for the correction of previous error of fact or law.” The request is subject to dismissal unless it includes a statement that a copy was provided to the other parties, and is filed on or before the 20<sup>th</sup> day after the decision sought to be reconsidered was mailed. OAR 471-041-0145(2) (May 13, 2019).

EAB dismissed claimant’s late application for review without prejudice and subject to claimant filing a timely request for reconsideration within 20 days after EAB’s dismissal decision was issued. Claimant filed a request for reconsideration consistent with the requirements set forth in OAR 471-041-0145. The request for reconsideration is, therefore, allowed.

**Application for review to EAB.** An application for review is timely if it is filed within 20 days of the date that the Office of Administrative Hearings mailed the order for which review is sought. ORS 657.270(6); OAR 471-041-0070(1) (May 13, 2019). The 20-day filing period may be extended a “reasonable time” upon a showing of “good cause.” ORS 657.875; OAR 471-041-0070(2). “Good cause” means that factors or circumstances beyond the applicant’s reasonable control prevented timely filing. OAR 471-041-0070(2)(a). A “reasonable time” is seven days after the circumstances that prevented the timely filing ceased to exist. OAR 471-041-0070(2)(b). A late application for review will be dismissed unless it includes a written statement describing the circumstances that prevented a timely filing. OAR 471-041-0070(3).

The application for review of Order No. 24-UI-246564 was due by February 15, 2024. Claimant’s application for review was hand-dated February 1, 2024. Nevertheless, EAB dismissed claimant’s application for review as late because it was received on February 26, 2024, and the envelope in which it was mailed contained no postmark, explaining:

OAR 471-041-0065(1)(b) (May 13, 2019) provides that the filing date of an application for review “is the date that the document is deposited in the United States mail in an envelope with first class postage, as evidenced by the postmark affixed to the envelope by the United States Postal Service.” Further, OAR 471-041-0065(2) states, “Where the information specified in section (1) of this rule is missing, unclear, or improbable the filing date is the date that EAB determines to be the most probable date of filing.” Because OAH received claimant’s filings on Monday, February 26, 2024, claimant most probably mailed the documents on the preceding Friday, February 23, 2024, and that date has therefore been determined as the filing date of the application for review.

EAB Decision 2024-EAB-0254 at 1. However, claimant asserted in their request for reconsideration that following a period of winter weather which led to “mail backups, power outages, and other mishaps,” they “filed [their application for] review ASAP, and sent it in Feb. 1. However, later that week, more storms hit and caused more havoc, resulting in a likely mail delay.” Claimant’s Request for Reconsideration at 1. Considering claimant’s assertions here, EAB finds most probable that claimant mailed the application for review on February 1, 2024. As such, claimant’s application for review was timely filed, and is allowed.

**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 request for hearing on decision # 92604 was due by January 8, 2024. Because claimant did not file their request until January 16, 2024, the request was late. Claimant stated in their request for hearing, “. . . without any reason given to me, I have been denied my weekly claim beginning on 12/09/23 onward. I am entirely unsure [why] this is[.]” Exhibit 2 at 2. Additionally, in their appellant questionnaire response, claimant stated, “All I have received prior to [the order under review and appellant questionnaire] are weekly letters telling me I cannot receive benefits for the week, and instructing me to call a number that is down, the phone number doesn’t work anymore.” EAB Exhibit 1 at 1.

These statements suggest that claimant may not have received decision # 92604 timely, or at all, which may have constituted a factor beyond their reasonable control which prevented them from filing a timely request for hearing. However, more information is necessary to determine whether they had good cause for filing the late request for hearing and, if so, whether they did so within the seven-day “reasonable time” period required by OAR 471-040-0010. On remand, the ALJ should inquire as to when, if at all, claimant received decision # 92604, what factors, if any, caused a delay in their receiving the decision and, if they did not receive it, what prompted them to file the request for hearing when they did.

Order No. 24-UI-246564 therefore is set aside, and this matter remanded for a hearing on whether claimant’s late request for hearing on the Department’s decision # 92604 should be allowed and, if so, the merits of that decision.

**DECISION:** Claimant’s request for reconsideration is allowed. On reconsideration, EAB Decision 2024-EAB-0254 is set aside, and claimant’s application for review is allowed. Order No. 24-UI-246564 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service:** May 31, 2024

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-246564 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**

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  
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