

**EMPLOYMENT APPEALS BOARD DECISION**  
**2024-EAB-0292**

*Reversed*  
*Late Request for Hearing Allowed*  
*Merits Hearing Required*

**PROCEDURAL HISTORY:** On October 20, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving benefits effective June 13, 2021 (decision # 181429). On November 9, 2022, decision # 181429 became final without claimant having filed a request for hearing. On May 1, 2023, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on August 24, 2023, issued Order No. 23-UI-233635,<sup>1</sup> dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by September 7, 2023. On September 1, 2023, claimant filed a timely response to the appellant questionnaire. On February 1, 2024, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 23-UI-233635 was vacated and that a new hearing would be scheduled to determine whether to allow claimant's late request for hearing and, if so, the merits of decision # 181429. On February 29, 2024, ALJ Logan conducted a hearing at which the employer and the Department failed to appear, and on March 1, 2024, issued Order No. 24-UI-249248, dismissing claimant's late request for hearing and leaving decision # 181429 undisturbed. On March 21, 2024, claimant filed an application for review of Order No. 24-UI-249248 with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) On October 20, 2022, the Department mailed decision # 181429 to claimant's address on file with the Department. Decision # 181429 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 November 9, 2022." Exhibit 1 at 2. The Department mailed decision # 181429 to claimant's previous address in Springfield, Oregon, at which he had not resided since 2021. Claimant did not notify the Department of his change of address at that time, as he was no longer claiming benefits.

<sup>1</sup> Order No. 23-UI-233635 was originally issued on August 17, 2023, but was re-issued under the same order number on August 24, 2023, to correct claimant's mailing address.

(2) Around the time of decision # 181429's issuance, claimant was living in Texas, in a trailer without an official mailing address. Claimant was using his grandmother's address in Woodburn, Oregon at the time, and had his mail forwarded there. Decision # 181429 was forwarded to the Woodburn address. However, claimant's grandmother did not notify claimant of the decision when she received it. On February 19, 2023, after claimant had returned to Oregon, claimant discovered that his grandmother had received decision # 181429.

(3) After discovering decision # 181429, claimant contacted the Department by phone in order to determine how to file a request for hearing. Claimant called the Department six times between his initial receipt of decision # 181429 and when he finally filed the request for hearing on May 1, 2023. During the first five calls to the Department, the various representatives to whom claimant spoke understood that claimant wished to appeal decision # 181429 and advised him to file the hearing request online. Claimant attempted to follow the representatives' instructions each time, but "struggled" to follow their instructions and was unable to determine how to correctly file the request. Audio Record at 22:08. On the sixth call, claimant spoke to a Department representative who walked claimant through the process of filing the hearing request online. On May 1, 2023, claimant successfully completed and submitted his request for hearing online.

**CONCLUSIONS AND REASONS:** Claimant's late request for hearing is allowed. Order No. 24-UI-249248 is reversed and this matter remanded for a hearing on the merits of decision # 181429.

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 # 181429 was due by November 9, 2022. Because claimant did not file his request for hearing until May 1, 2023, the request was late. The record shows that claimant's delay in filing his request for hearing was initially the result of not having received the decision until several months later, as he was temporarily living in a different state, and his grandmother, who had received the decision, did not notify claimant of its receipt. As claimant was no longer claiming benefits when decision # 181429 was issued, and therefore had no reason to suspect that such a decision would be forthcoming, this was a factor beyond claimant's reasonable control which prevented him from timely filing a request for hearing.

The order under review found similarly, but concluded, "once claimant had received the administrative decision, the circumstance which prevented him from filing a timely appeal—his lack of knowledge or receipt of the decision—ceased to exist," and that claimant therefore did not file the request within a "reasonable time." Order No. 24-UI-249248 at 3. The record does not support this conclusion. While it is reasonable to conclude that claimant was, at that point, no longer prevented from filing a request for hearing due to factors beyond his reasonable control, the record shows that claimant's failure to file a request for hearing at the time he learned of decision # 181429 was the result of an excusable mistake.

After learning of decision # 181429, claimant contacted the Department on six separate occasions to seek help with filing a request for hearing. On each of the first five occasions, the representatives to whom claimant spoke gave claimant instructions on how to file the request for hearing online. Claimant attempted to follow these instructions each time, but was unsuccessful. It was only on the final call that claimant received instructions which he was able to follow, and, thereafter, successfully file a request for hearing. Because claimant repeatedly and unsuccessfully attempted to file a request for hearing by following instructions given to him by Department representatives, the record shows that claimant's failure to file the request until his final call with the Department was the result of claimant's inability to follow directions despite substantial efforts to comply, which is an excusable mistake. Although the record does not show the precise date of that sixth call with the Department, it can be reasonably inferred from claimant's repeated and diligent filing attempts that it took place on or about May 1, 2023, the same day as the hearing request itself. Therefore, the circumstances that prevented claimant's timely filing of a request for hearing on decision # 181429 ended on or about that day, and claimant likely filed his late request for hearing within a reasonable time.

For the above reasons, claimant had good cause for failing to file a timely request for hearing, and filed his late request for hearing within a reasonable time. Claimant's late request for hearing therefore is allowed, and claimant is entitled to a hearing on the merits of on decision # 181429.

**DECISION:** Order No. 24-UI-249248 is set aside, as outlined above.

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

**DATE of Service:** April 29, 2024

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-249248 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 الاستئناف 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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