

**EMPLOYMENT APPEALS BOARD DECISION**  
**2024-EAB-0313**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On July 15, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work from June 26 through July 9, 2022 (weeks 26-22 through 27-22) and was not eligible for benefits for those weeks and until the reason for the denial ended (decision # 101226). On August 4, 2022, decision # 101226 became final without claimant having filed a request for hearing. On May 3, 2023, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on September 21, 2023, issued Order No. 23-UI-236426, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by October 5, 2023. On October 10, 2023, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 23-UI-236426 with the Employment Appeals Board (EAB). On October 17, 2023, ALJ Kangas mailed a letter stating that the Office of Administrative Hearings (OAH) would not consider claimant's questionnaire response or issue another order regarding this matter because the questionnaire response was late. This matter comes before EAB based upon claimant's October 10, 2023, application for review of Order No. 23-UI-236426.

**EVIDENTIARY MATTER:** EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is claimant's response to the appellant questionnaire, 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.

**FINDINGS OF FACT:** (1) On July 15, 2022, the Department mailed decision # 101226 to claimant's address on file with the Department. Decision # 101226 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 August 4, 2022." Exhibit 1 at 2.

(2) Claimant did not receive decision # 101226. EAB Exhibit 1 at 3.

(3) On July 26, 2022, the Department issued a different administrative decision, decision # 75251, which concluded that claimant had been discharged for misconduct and was disqualified from receiving benefits effective June 26, 2022. Claimant filed a timely request for hearing on decision # 75251. On April 4, 2023, a hearing was held in that matter, and on April 7, 2023, the ALJ presiding over the matter issued Order No. 23-UI-221539, reversing decision # 75251 by concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving benefits on the basis of the work separation.<sup>1</sup>

(4) On a date after April 7, 2023, but before May 3, 2023, claimant contacted the Department to inquire about receiving benefits for weeks they had claimed, since the disqualification previously established by decision # 75251 had been reversed. EAB Exhibit 1 at 3. During the telephone conversation, a Department representative informed claimant of decision # 101226. EAB Exhibit 1 at 3.

(5) On May 3, 2023, claimant filed a late request for hearing on decision # 101226.

**CONCLUSIONS AND REASONS:** Order No. 23-UI-236426 is set aside and this matter remanded for a hearing on whether claimant’s late request for hearing on decision # 101226 was filed within a reasonable time and should be allowed, and if so, the merits of that decision.

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 timely request for hearing on decision # 101226 was August 4, 2022. Because claimant did not request a hearing on decision # 101226 until May 3, 2023, the request for hearing was late.

The information contained in claimant’s appellant questionnaire response shows that they did not receive decision # 101226 in the mail and were unaware of the decision until a point in time after April 7, 2023, but before May 3, 2023. Because claimant’s non-receipt of the decision # 101226 was a circumstance beyond their reasonable control that prevented a timely filing, claimant established good cause to extend the filing deadline beyond August 4, 2022. However, the circumstance beyond claimant’s reasonable control may have ceased to exist when claimant learning of the existence of decision # 101226 from the Department representative. Based on available information, it is not known precisely when the representative informed claimant of the existence of decision # 101226, other than that it occurred at a point in time after April 7, 2023, but before May 3, 2023. Remand is therefore necessary to develop the record as to when that conversation occurred.

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<sup>1</sup> EAB has taken notice of the facts contained in this paragraph, which are 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.

On remand, the ALJ should inquire as to when claimant learned of the existence of decision # 101226 and his right to appeal, and whether claimant's May 3, 2023, late request for hearing occurred within a seven-day "reasonable time" of that date. If the record on remand shows that claimant's late request for hearing was made within a reasonable time, the late request for hearing should be allowed and the ALJ should turn to the merits of the case. Order No. 23-UI-236426 therefore is reversed, and this matter remanded for a hearing on whether claimant's late request for hearing was filed within a reasonable time and should be allowed, and if so, the merits of decision # 101226.

**DECISION:** Order No. 23-UI-236426 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 2, 2024

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-236426 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**  
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