

**EMPLOYMENT APPEALS BOARD DECISION**  
**2024-EAB-0388**

*Reversed*  
*Request to Reopen Allowed*  
*Timeliness Hearing Required*

**PROCEDURAL HISTORY:** On August 16, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant failed to provide information in accordance with the Department's rules and was therefore ineligible to receive unemployment insurance benefits for the weeks of July 30, 2023, through August 12, 2023 (weeks 31-23 through 32-23) and until the reason for the denial ended (decision # 124923). Also on August 16, 2023, the Department served notice of an administrative decision concluding that claimant failed to register for work in accordance with the Department's rules and was therefore ineligible to receive unemployment insurance benefits for weeks 31-23 through 32-23 and until the reason for the denial ended. On September 5, 2023, both administrative decisions became final without claimant having filed requests for hearing.

On October 1, 2023, claimant filed late requests for hearing on both administrative decisions. ALJ Kangas considered claimant's requests, and on October 24, 2023, and October 25, 2023, issued Orders No. 23-UI-239375 and 23-UI-239550, dismissing as late claimant's requests for hearing on decision # 124923 and the work registration administrative decision, respectively, subject to claimant's right to renew the requests by responding to appellant questionnaires by November 7, 2023, and November 8, 2023, respectively. On November 6, 2023, claimant filed a timely joint response to the appellant questionnaires. On December 14, 2023, the Office of Administrative Hearings (OAH) mailed letters to claimant stating that Orders No. 23-UI-239375 and 23-UI-239550 were vacated and that hearings would be scheduled to determine whether claimant had good cause to file the late requests for hearing and, if so, the merits of the two administrative decisions.

On December 21, 2023, notice was mailed to claimant that a consolidated hearing was scheduled for January 4, 2024. Claimant failed to appear at the hearing, and ALJ Fraser issued Orders No. 24-UI-244692 and 24-UI-244693, dismissing claimant's requests for hearing on decision # 124923 and the work registration administrative decision, respectively, due to claimant's failure to appear. On January 22, 2024, claimant filed timely requests to reopen the January 4, 2024, hearing. On April 10, 2024, ALJ Fraser conducted a consolidated hearing at which the Department submitted an attestation in lieu of

appearing. On April 10, 2024, and April 11, 2024, ALJ Fraser issued Orders No. 24-UI-251923 and 24-UI-251973, denying claimant's requests to reopen and leaving Orders No. 24-UI-244692 and 24-UI-244693, respectively, undisturbed. On April 22, 2024, claimant filed applications for review of Orders No. 24-UI-251923 and 24-UI-251973 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 24-UI-251923 and 24-UI-251973. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2024-EAB-0387 and 2024-EAB-0388).

**FINDINGS OF FACT:** (1) On August 16, 2023, both administrative decisions were mailed to claimant's address of record on file with the Department.

(2) On October 1, 2023, claimant filed late requests for hearing on both administrative decisions.

(3) On December 21, 2023, notice of a consolidated hearing scheduled for January 4, 2024, was mailed to claimant's address of record, a PO Box. Claimant was out of town on vacation from December 26, 2023, until January 2, 2024. Claimant did not expect mail, rather than e-mail, correspondence regarding her appeals during this absence as she had requested to receive such correspondence by email. Claimant was ill upon her return home and therefore did not immediately go to the PO Box to check her mail.

(4) On January 4, 2024, claimant had someone drive her to the post office, where she retrieved the hearing notice from her box. Claimant immediately opened the notice, but the hearing time had already passed.

(5) On January 22, 2024, claimant filed a request to reopen the January 4, 2024, hearing.

**CONCLUSIONS AND REASONS:** Claimant's request to reopen the January 4, 2024, consolidated hearing is allowed. Orders No. 24-UI-251923 and 24-UI-251973 are set aside and the matters remanded for a hearing to determine whether claimant's late requests for hearing should be allowed and, if so, the merits of the August 16, 2023, administrative decisions.

ORS 657.270(5) provides that any party who failed to appear at a hearing may request to reopen the hearing, and the request will be allowed if it was filed within 20 days of the date the hearing decision was issued and shows good cause for failing to appear. "Good cause" exists when the requesting party's failure to appear at the hearing arose from an excusable mistake or from factors beyond the party's reasonable control. OAR 471-040-0040(2) (February 10, 2012). The party requesting reopening shall set forth the reason(s) for missing the hearing in a written statement, which the Office of Administrative Hearings (OAH) shall consider in determining whether good cause exists for failing to appear at the hearing. OAR 471-040-0040(3).

Claimant filed her request to reopen on January 22, 2024, within 20 days of the issuance of Orders No. 24-UI-251923 and 24-UI-251973, and included a statement regarding missing the hearing. Therefore, the request to reopen meets the threshold requirements for consideration.

Claimant missed the hearing because she was away from home for one week during a holiday time period and then, due to illness, did not check her PO Box until two days after her return home. The

hearing notice was delivered to her PO Box between December 26, 2023, and January 3, 2024, and claimant did not retrieve it until after the hearing time had passed on January 4, 2024. The orders under review concluded that claimant's failure to retrieve the hearing notice prior to the hearing date was not the result of an excusable mistake. Orders No. 24-UI-251923 at 3; 24-UI-251973 at 3. The consolidated hearing record does not support this conclusion.

Claimant filed her late requests for hearing on October 1, 2023, and the consolidated hearing notice was mailed December 21, 2023. Claimant testified that she was expecting to receive notice of the hearing being scheduled, but only by email, as she had "marked the box multiple times [that] the best contact [method] is to email me," but had not yet received any emails regarding her appeals. Audio Record at 12:58. This expectation led claimant not to make arrangements for her mail to be monitored while she was unable to check it which, in turn, caused claimant to miss the hearing because she did not retrieve the notice from her mailbox prior to the hearing time.

Claimant's mistaken belief that she would receive notice by email regarding her appeals, and therefore would not risk missing a notice or hearing by being unable to check her mail for a brief time period, was reasonable under the circumstances. OAH's failure to honor claimant's request for email communications, or to inform her that her request would not be honored regarding notice of scheduled hearings and that she should therefore expect such notices only by mail, made claimant's mistake excusable. Accordingly, claimant has shown good cause for missing the January 4, 2024, consolidated hearing.

For these reasons, the request to reopen is allowed and the matters remanded for a consolidated hearing to determine whether claimant's late requests for hearing should be allowed and, if so, the merits of the August 16, 2023, administrative decisions.

**DECISION:** Orders No. 24-UI-251923 and 24-UI-251973 are set aside. Claimant's request to reopen the January 4, 2024, consolidated hearing is allowed and a hearing to determine whether claimant's late requests for hearing should be allowed and, if so, the merits of the August 16, 2023 administrative decisions, is required.

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

**DATE of Service:** May 30, 2024

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Orders No. 24-UI-251923 or 24-UI-251973 or return these matters to EAB. Only timely applications for review of the subsequent orders will cause the matters 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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