

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0396

Late Application for Review Allowed
Reversed ~ Eligible Weeks 03-24 through 04-24

Se Permite la Solicitud Tardía de Revisión de la Orden Judicial
Orden Revocada ~ Elegible Semanas 03-24 a 04-24

Esta decisión concluye que se permite la solicitud tardía de revisión del reclamante y que el reclamante buscó trabajo activamente durante las semanas 03-24 y 04-24 y, por lo tanto, era elegible para recibir beneficios durante esas semanas. 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) determinó que se permitiría la solicitud tardía de revisión y por qué el reclamante era elegible para recibir beneficios. 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 February 5, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant failed to actively seek work from January 14, 2024, through January 27, 2024 (weeks 03-24 through 04-24) and therefore was not eligible to receive unemployment insurance benefits for those weeks (decision # 145812). Claimant filed a timely request for hearing. On March 21, 2024, ALJ Chiller conducted a hearing interpreted in Spanish at which the Department failed to appear or provide an attestation. On March 25, 2024, ALJ Chiller issued Order No. 24-UI-250859, affirming decision # 145812. On April 15, 2024, Order No. 24-UI-250859 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On April 23, 2024, claimant filed a late application for review with EAB.

HISTORIAL PROCESAL: *El 5 de febrero de 2024, el Departamento de Empleo de Oregón (el Departamento) mandó una decisión administrativa que concluye que el reclamante no buscó trabajo*

¹ This decision concludes that claimant's late application for review is allowed and that claimant actively sought work during weeks 03-24 and 04-24. 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) reached its conclusions. 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.

activamente desde el 14 de enero de 2024 hasta el 27 de enero de 2024 (semanas 03-24 a 04-24) y, por lo tanto, no era elegible para recibir beneficios del seguro de desempleo durante esas semanas (decisión # 145812). El reclamante presentó una solicitud de audiencia a tiempo. El 21 de marzo de 2024, la jueza Chiller llevó a cabo una audiencia interpretada en español en la que el Departamento no asistió ni proporcionó un certificado escrito. El 25 de marzo de 2024, ALJ Chiller emitió la Orden No. 24-UI-250859, confirmando la decisión # 145812. El 15 de abril de 2024, la Orden No. 24-UI-250859 se convirtió en definitiva sin que el reclamante hubiera presentado una solicitud de revisión ante la Junta de Apelaciones de Empleo (EAB). El 23 de abril de 2024, el reclamante presentó una solicitud tardía de revisión ante EAB.

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is the written statement claimant provided with his late application for review, along with its English translation, and has been 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.

CUESTIÓN DE EVIDENCIA: *EAB ha considerado evidencia adicional al llegar a esta decisión bajo OAR 471-041-0090(1) (13 de mayo de 2019). La prueba adicional es la declaración escrita que el reclamante proporcionó con su solicitud tardía de revisión, junto con una traducción al inglés, y ha sido marcada como Anexo 1 de EAB (EAB Exhibit 1), y una copia proporcionada a las partes con esta decisión. Cualquier parte que se oponga a que admitamos el Anexo 1 de EAB debe presentar dicha objeción a esta oficina por escrito, exponiendo la base de la objeción por escrito, dentro de los diez días posteriores a que enviemos por correo esta decisión. OAR 471-041-0090(2). A menos que se reciba y sostenga dicha objeción, la prueba permanecerá en el expediente.*

FINDINGS OF FACT: (1) At some point prior to January 14, 2024, claimant filed an initial claim for unemployment insurance benefits.

(2) Claimant worked as a roofer for an employer. During the winter months, there were days that claimant's employer did not have claimant report to work due to the weather. Prior to the winter, claimant worked a full-time, 40-hour per week schedule. During the winter season, he sometimes worked only one or two days per week due to the weather. There were some weeks during the winter when he did not perform any work at all.

(3) Claimant claimed benefits for the week of December 31, 2023 through January 6, 2024 (week 01-24). Claimant did not claim benefits for the week of January 7, 2024 through January 13, 2024 (week 02-24).

(4) Claimant claimed benefits for the weeks of January 14, 2024 through January 27, 2024 (weeks 03-24 and 04-24). These are the weeks at issue. The Department paid claimant benefits for these weeks.

(5) Claimant filed his weekly claims for the weeks at issue using the Department's online system. He previously had the ability to check a box indicating that he was temporarily laid off from work when he

filed his weekly claim forms. For unknown reasons, the box did not appear on claimant's claim forms for the weeks at issue.

(6) Claimant did not perform any work search activities for the weeks at issue because he was expecting to return to work for his employer. During the weeks at issue, claimant's supervisor would send a text message to claimant each morning to indicate whether there was any work available. Claimant would check his telephone each morning at 4:00 a.m. to review the supervisor's text. The supervisor did not have work available for claimant during the weeks at issue.

(7) On March 25, 2024, the Office of Administrative Hearings (OAH) mailed Order No. 24-UI-250859 to claimant's address on file with OAH. Order No. 24-UI-250859 stated, "You may appeal this decision by filing the attached form Application for Review with the Employment Appeals Board within 20 days of the date that this decision is mailed." Order No. 24-UI-250859 at 4. Order No. 24-UI-250859 also stated on its certificate of mailing that "Any appeal from this Order must be filed on or before April 15, 2024 to be timely." Both statements were translated into Spanish.

(8) However, many sections of Order No. 24-UI-250859 were not translated in Spanish. For example, the "History of the Case," "Issue," "Evidentiary Rulings," "Findings of Fact," "Conclusions of Law," and "Opinion" sections of the order were not translated into Spanish. *See* Order No. 24-UI-250859 at 1-4.

(9) Claimant received Order No. 24-UI-250859 shortly after it was mailed. Upon receipt of Order No. 24-UI-250859, claimant tried to have the order interpreted to him in Spanish but was not successful. EAB Exhibit 1 at 1. On April 15, 2024, Order No. 24-UI-250859 became final without claimant having filed an application for review with EAB. On April 23, 2024, claimant filed a late application for review.

CONCLUSIONS AND REASONS: Claimant's late application for review is allowed. Claimant actively sought work during weeks 03-24 and 04-24 and was therefore eligible to receive benefits for those weeks.

CONCLUSIONES Y RAZONES: *Se permite la solicitud de revisión tardía del reclamante. El reclamante buscó trabajo activamente durante las semanas 03-24 y 04-24 y, por lo tanto, era elegible para recibir beneficios durante esas semanas.*

Late Application for Review. An application for review is timely if it is filed within 20 days of the date that the Office of Administrative Hearings (OAH) 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 deadline to file an application for review of Order No. 24-UI-250859 was April 15, 2024. Because claimant did not file his application for review until April 23, 2024, the application for review was late.

In his written argument claimant stated, translated from Spanish, “I tried to have the decision explained to me in Spanish and I did not succeed.” EAB Exhibit 1. The record shows that many sections in the order under review, including the “History of the Case,” “Issue,” “Evidentiary Rulings,” “Findings of Fact,” “Conclusions of Law,” and “Opinion” sections of the order, were not translated in Spanish. *See* Order No. 24-UI-250859 at 1-4. Claimant’s evidence is sufficient to conclude that claimant tried to have these sections of the order interpreted to him in Spanish but was not successful. The evidence supports an inference that the fact that much of the order was not translated into Spanish and claimant’s unsuccessful efforts to obtain interpretation were factors beyond his reasonable control that prevented a timely filing by the April 15, 2024 deadline. As claimant was able to file his application for review on April 23, 2024, the record supports an inference that the factors preventing a timely filing ceased on that date. Thus, claimant established good cause to extend the deadline to file his application for review to April 23, 2024 and filed on that date, within a seven day “reasonable time.” Claimant’s late application for review is therefore allowed.

Actively Seeking Work. To be eligible to receive benefits, unemployed individuals must actively seek work during each week claimed. ORS 657.155(1)(c). Typically, to be actively seeking work, an individual “must conduct at least five work-seeking activities per week,” with two of the five work-seeking activities being a direct contact with an employer who might hire the individual. OAR 471-030-0036(5)(a) (March 25, 2022). However, these work search requirements do not apply if “the individual is temporarily unemployed as described in section (b)” of the administrative rule. OAR 471-030-0036(5)(a). For individuals who are temporarily unemployed, OAR 471-030-0036(5)(b) (March 25, 2022) defines “actively seeking work” as follows:

- (A) They are considered to be actively seeking work when they remain in contact with their regular employer and are capable of accepting and reporting for any suitable work with that employer;
- (B) There is a reasonable expectation that they will be returning to work for their regular employer. The work the individual is returning to must be full time or pay an amount that equals or exceeds their weekly benefit amount;
- (C) The department will not consider the individual to be temporarily unemployed if they were separated from their employer for reasons other than a lack of work, the work the individual is returning to is not with their most recent employer, or the length the individual is unemployed is longer than the period described in subsection (D) of this section; and
- (D) The department will consider that the period for which an individual is temporarily unemployed:
 - (i) Begins the last date the individual performed services for the employer. In the case of an individual still working for the employer, it is the last date worked during the week in which the individual had earnings less than their weekly benefit amount; and

- (ii) Cannot be greater than four weeks between the week the individual became temporarily unemployed and the week the individual returns to work as described in subsection (B) of this section.

Because the Department paid claimant benefits, it had the burden to prove that benefits should not have been paid. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976). The Department did not appear at hearing or provide other information, such as an attestation.

The order under review concluded that that claimant did not actively seek work, and was therefore not eligible to receive benefits for the weeks at issue, because claimant was not a temporarily unemployed individual and did not conduct the work-seeking activities required for individuals who are not temporarily unemployed. Order No. 24-UI-250859 at 4. The record does not support this conclusion.

Claimant met the criteria set forth by OAR 471-030-0036(5)(b) and, therefore, was a temporarily unemployed individual during the weeks at issue. Claimant's circumstances satisfied subpart (A) because the record shows that claimant remained in contact with the employer via text messaging with his supervisor and was capable of accepting suitable work from them during each of the weeks at issue. As to subpart (B), the interruption in available work that claimant experienced was caused by winter weather which was subject to improving. Claimant expected that upon improvement of the weather, work would be available to claimant and would be full-time in nature as it was prior to the winter. This is sufficient to establish that claimant had a reasonable expectation that he would be returning to full-time work for his regular employer and thus fulfills OAR 471-030-0036(5)(b)(B).

Finally, as applicable here, subparts (C) and (D) provide that the Department does not consider someone to be a temporarily unemployed individual if their length of unemployment is longer than four weeks between their last day worked and the week the individual returns to work. On this record, and considering that the Department has the burden of proof but did not appear or provide information in lieu of appearing, it is reasonable to infer that claimant's last day worked occurred during the week of January 7, 2024 through January 13, 2024 (week 02-24), given that claimant did not claim benefits that week, and the record shows that claimant would sometimes work a day or two per week in the winter if the weather permitted. Thus, the record supports the inference that claimant's length of unemployment was not longer than four weeks from his last day worked in week 02-24 through the weeks at issue, weeks 03-24 and 04-24. Accordingly, claimant was a temporarily unemployed individual because he fulfilled subparts (A) and (B) of OAR 471-030-0036(5)(b) and remained a temporarily unemployed individual per subparts (C) and (D) during the weeks at issue, as his period of unemployment had not exceeded four weeks during those weeks.

Because claimant was a temporarily unemployed individual, he was not required to make five work-seeking activities per week to be actively seeking work. Instead, to actively seek work during the weeks at issue, it was sufficient for claimant to remain in contact with his regular employer, and be capable of accepting any suitable work from them. Claimant remained in contact with the employer and was capable of accepting work from them during the weeks at issue. Thus, claimant actively sought work during the weeks at issue and was eligible to receive unemployment insurance benefits for those weeks.

DECISION: Order No. 24-UI-250859 is set aside, as outlined above. *La Orden de la Audiencia 24-UI-250859 se deja a un lado, de acuerdo a lo indicado en esta decisión.*

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

DATE of Service: June 3, 2024

FECHA de Servicio: 3 de junio de 2024

NOTE: This decision reverses an order that denied benefits. Please note that payment of benefits, if any are owed, may take approximately a week to ten days for the Department to complete.

NOTA: Esta decisión revoca una orden que negó los beneficios. Tenga en cuenta que el pago de los beneficios, si se adeuda, puede demorar aproximadamente de una semana a diez días para que el Departamento lo complete.

NOTE: You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. See ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at courts.oregon.gov. Once on the website, use the ‘search’ function to search for ‘petition for judicial review employment appeals board’. A link to the forms and information will be among the search results.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.

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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
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www.Oregon.gov/Employ/eab

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