

**EMPLOYMENT APPEALS BOARD DECISION**  
**2024-EAB-0398**

*Reversed ~ Late Request to Reopen Allowed*  
*Merits Hearing Required*

*Revocada ~ La Aplicación Tardía Para Reabrir la Audiencia es Permitida*  
*Se Requiere una Audiencia Sobre los Méritos*

*Esta decisión concluye que se permite la solicitud tardía del reclamante de reabrir la audiencia del 7 de marzo de 2023 y el reclamante tiene derecho a una audiencia sobre los méritos de la decisión # 112952 (su trabajo con MG Waldbaum Co.). 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) decidió permitir que se reabriera la solicitud tardía y devolver este asunto a la OAH para una audiencia sobre lo que sucedió con MG Waldbaum Co. 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.<sup>1</sup>*

**Aviso:** Si necesita interpretación verbal en español de la parte de esta decisión que está en inglés, puede obtenerla llamando a EAB al 503-378-2077, y EAB obtendrá un intérprete en la línea.

**PROCEDURAL HISTORY:** On September 21, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and therefore was disqualified from receiving unemployment insurance benefits effective May 9, 2021 (decision # 112952). Claimant filed a timely request for hearing. On February 24, 2023, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for March 7, 2023. On March 7, 2023, claimant failed to appear at the hearing, and on March 8, 2023, ALJ Schmidt issued Order No. 23-UI-218348, dismissing claimant's request for hearing due to his failure to

<sup>1</sup> This decision concludes that claimant is allowed to reopen the March 7, 2023, hearing and have a hearing about the merits of decision # 112952 (his employment with MG Waldbaum Co). 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) determined that claimant is allowed to reopen the March 7, 2023, hearing and have a hearing about claimant's work separation from MG Waldbaum Co. 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.

appear. On March 28, 2023, Order No. 23-UI-218348 became final without claimant having filed a request to reopen the hearing. On April 11, 2023, claimant filed a late request to reopen the hearing. On April 12, 2024, ALJ Chiller conducted a hearing interpreted in Spanish, at which both the employer and the Department failed to appear, and on April 22, 2024 issued Order No. 24-UI-252744, denying claimant's late request to reopen the March 7, 2023 hearing and leaving Order No. 23-UI-218348 undisturbed. On April 25, 2024, claimant filed an application for review of Order No. 24-UI-252744 with the Employment Appeals Board (EAB).

**HISTORIAL PROCESAL:** *El 21 de septiembre de 2021, el Departamento de Empleo de Oregón (el Departamento) mandó por correo una decisión administrativa que concluye que el reclamante dejó voluntariamente al trabajo sin una causa valida y, por lo tanto, fue descalificado para recibir beneficios del seguro de desempleo a partir del 9 de mayo de 2021 (decisión # 112952). El reclamante presentó una solicitud de audiencia a tiempo. El 24 de febrero de 2023, la Oficina de Audiencias Administrativas (OAH, por sus siglas en inglés) envió un aviso por correo de una audiencia programada para el 7 de marzo de 2023. El 7 de marzo de 2023, el reclamante no se presentó a la audiencia, y el 8 de marzo de 2023, ALJ Schmidt emitió la Orden No. 23-UI-218348, desestimando la solicitud de audiencia del demandante debido a su falta de presentarse en la audiencia. El 28 de marzo de 2023, la Orden No. 23-UI-218348 se convirtió en final sin que el reclamante hubiera presentado una solicitud para reabrir la audiencia a tiempo. El 11 de abril de 2023, el reclamante presentó una solicitud tardía para reabrir la audiencia. El 12 de abril de 2024, la jueza administrativa Chiller llevó a cabo una audiencia interpretada en español, en la que ni el empleador ni el Departamento asistieron, y el 22 de abril de 2024 emitió la Orden No. 24-UI-252744, denegando la solicitud tardía del reclamante de reabrir la audiencia del 7 de marzo de 2023 y dejando intacta la Orden No. 23-UI-218348. El 25 de abril de 2024, el reclamante presentó una solicitud de revisión de la Orden No. 24-UI-252744 ante la Junta de Apelaciones de Empleo (EAB).*

**WRITTEN ARGUMENTS:** Claimant filed written arguments on April 25, 2024, and June 4, 2024. Claimant did not declare that he provided a copy of either of his arguments to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). Additionally, claimant's June 4, 2024, argument was not received by EAB within the time period allowed under OAR 471-041-0080(1). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

The parties may offer new information, such as the information offered in claimant's written arguments, into evidence at the remand hearing. At that time, it will be determined if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing regarding documents they wish to have considered at the hearing. These instructions will instruct the parties to provide copies of such documents to the ALJ and the other parties before the hearing at their addresses as shown on the certificate of mailing for the notice of hearing.

**ARGUMENTOS ESCRITOS:** *El reclamante presentó argumentos escritos el 25 de abril de 2024 y el 4 de junio de 2024. El reclamante no declaró que proporcionó una copia de ninguno de sus argumentos a la parte o partes opuestas como lo requiere la regla OAR 471-041-0080 (2) (a) (13 de mayo de 2019). Además, el argumento del reclamante del 4 de junio de 2024 no fue recibido por EAB dentro del período de tiempo permitido por OAR 471-041-0080(1). Al llegar a esta decisión, EAB solo consideró la información recibida como evidencia en la audiencia. Véase ORS 657.275(2).*

*Las partes pueden ofrecer nueva información, como la información contenida en los argumentos escritos del reclamante, como evidencia en la nueva audiencia. Durante esa audiencia, se determinará si la nueva información será admitida en el expediente del caso. Las partes deben seguir las instrucciones en el aviso de la nueva audiencia con respecto a los documentos que desean que se consideren en la audiencia. Estas instrucciones requerirán que las partes proporcionen copias de dichos documentos al juez o jueza administrative/a y a las otras partes antes de la audiencia a sus direcciones que se muestran en el certificado de envío por correo para el aviso de la nueva audiencia.*

**FINDINGS OF FACT:** (1) On September 21, 2021, the Department mailed decision # 112952 to claimant's address on file with the Department. Claimant received decision # 112952 and on October 12, 2021, filed a timely request for hearing.

(2) In approximately late 2021 or early 2022, claimant moved from his Woodburn address.

(3) On February 24, 2023, OAH served a notice of hearing on decision # 112952, scheduled for March 7, 2023. The notice of hearing was mailed to claimant's former address in Woodburn, which was still claimant's address on file with the Department at the time. However, claimant's nephews still lived at the Woodburn address, and received the notice of hearing on claimant's behalf.

(4) On March 7, 2023, claimant failed to appear at the hearing because he no longer lived at the Woodburn address and therefore did not receive the notice of hearing prior to the hearing date. On March 8, 2023, Order No. 23-UI-218348 was issued, dismissing claimant's request for hearing.

(5) On or around March 10, 2023, one of claimant's nephews delivered the notice of hearing to claimant at his new address. On or around March 11, 2023, claimant sent a letter to OAH explaining why he failed to appear at the hearing. Claimant did not receive a response from OAH.

(6) On March 14, 2023, claimant contacted OAH and updated his address.

(7) On March 28, 2023, Order No. 23-UI-218348 became final without claimant having filed a request to reopen the hearing.

(8) On March 30, 2023, claimant contacted OAH by phone and spoke to a representative who provided claimant with information on how to file a request to reopen the hearing by email. Claimant told the representative that he preferred to file the request by mail. On April 11, 2023, claimant filed a request to reopen the hearing by mail.

**CONCLUSIONS AND REASONS:** Claimant's late request to reopen the March 7, 2023, hearing is allowed, and claimant is entitled to a hearing on the merits of decision # 112952.

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. The period within which a party may request reopening may be extended if the party requesting reopening has good cause for failing to request reopening within the time allowed, and acts within a reasonable time. OAR 471-040-0041(1) (February 10, 2012). "Good cause" exists when an action, delay, or failure to act arises from an excusable mistake

or from factors beyond an applicant's reasonable control. OAR 471-040-0041(2). "A reasonable time," is seven days after the circumstances that prevented a timely filing ceased to exist. OAR 471-040-0041(3). The party requesting reopening shall set forth the reason(s) for filing a late request to reopen in a written statement, which OAH shall consider in determining whether good cause exists for the late filing, and whether the party acted within a reasonable time. OAR 471-040-0041(4). Under OAR 471-040-0041(2)(b)(A), "good cause" does not include "failure to receive a document due to not notifying the Employment Department or Office of Administrative Hearings of an updated address while the person is claiming benefits or if the person knows, or reasonably should know, of a pending appeal[.]"

Claimant failed to appear at the March 7, 2023, hearing because he did not receive the notice of hearing until after the date of the hearing because it was sent to a prior address. The record suggests that claimant did not update his address with the Department or OAH until after he missed the hearing. As such, claimant's failure to timely receive the notice of hearing was the result of his failure to update his address. However, claimant's request to reopen the hearing is not barred under OAR 471-040-0041(2)(b)(A) because there was such a long delay between when claimant requested a hearing and OAH scheduled the hearing. The record does not show that claimant was claiming benefits at the time that the notice of hearing was mailed. Likewise, although claimant may have known he had filed a request for hearing in October 2021, the record does not show that he knew or should have known that the appeal was still pending when OAH sent the notice of hearing some 18 months later. Because claimant's request to reopen is not barred under OAR 471-040-0041(2)(b)(A), his failure to appear at the hearing due to the notice being mailed to the wrong address constituted a factor beyond claimant's reasonable control. Claimant therefore had good cause for failing to appear at the hearing.

The factor beyond claimant's reasonable control—his failure to timely receive the notice of hearing—ceased once claimant received that document on or around March 11, 2023. However, claimant's failure to file a timely request to *reopen* the hearing was the result of an excusable mistake. The record shows that once claimant became aware that he had missed the hearing, he made several attempts to address the issue. Claimant initially sent a letter to OAH, shortly after he learned that he missed the hearing, but received no response. Claimant also contacted OAH on at least two occasions after this and was advised, at least once, on how to file a request to reopen. During a March 30, 2023, telephone call, an OAH representative advised claimant how to file the request by email, but claimant expressed that he preferred to do so by mail, and filed the request by mail on April 11, 2023. The record shows that all of claimant's written communications with the Department or OAH were handwritten and submitted by either mail or fax. This, coupled with claimant's expressed preference for mailing his request to reopen, suggests that claimant had limited ability to communicate via electronic means such as email. Additionally, claimants requested for a Spanish interpreter at the hearing shows claimant has limited English proficiency. Record at 2.

Claimant's preference to communicate by telephone or writing, limited English proficiency, and multiple contacts with the Department and OAH after he missed the hearing shows that claimant made substantial efforts to comply with the requirements to file a request to reopen the hearing after he learned that he had missed it. His failure to do so timely was therefore the result of an excusable mistake which ended once he filed the request to reopen on April 11, 2023. Claimant therefore had good cause for filing the late request to reopen the hearing, and did so within a reasonable time.

For the above reasons, claimant's late request to reopen the hearing is allowed, and claimant is entitled to a hearing on the merits of decision # 112952.

**DECISION:** Order No. 24-UI-252744 is set aside, and this matter remanded for further proceedings consistent with this order. *La Orden Judicial 24-UI-252744 se pone a un lado, y esta materia se remite para otros procedimientos constantes con esta orden.*

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

**DATE of Service: June 6, 2024**

**FECHA de Servicio: 6 de junio de 2024**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-252744 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

**NOTA:** *La falta de cualquier parte de presentarse a la nueva audiencia no reinstalará la Orden Judicial No. 24-UI-252744, ni devolverá esta orden a la EAB. Solamente una aplicación oportuna para revisión de la orden subsiguiente de la nueva audiencia volverá este caso a la 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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