

**EMPLOYMENT APPEALS BOARD DECISION**  
**2024-EAB-0412**

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

**PROCEDURAL HISTORY:** On September 29, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged by the employer for misconduct due to theft, and disqualified from receiving benefits effective July 9, 2023, and subject to cancellation of wages earned prior to July 14, 2023 (decision # 95054). Claimant filed a timely request for hearing. On October 13, 2023, notice was mailed to the parties that the hearing was scheduled for October 25, 2023. On October 25, 2023, claimant failed to appear at the hearing, and on November 2, 2023, ALJ Monroe issued Order No. 23-UI-240273, dismissing claimant's request for hearing due to her failure to appear.

On November 17, 2023, claimant filed a timely request to reopen the hearing. On January 24, 2024, the Office of Administrative Hearings (OAH) mailed the parties notice that Order No. 23-UI-240273 was vacated and that a hearing would be scheduled on whether to reopen the hearing and, if so, the merits of decision # 95054. On March 7, 2024, ALJ Monroe conducted the hearing, and on April 8, 2024, issued Order No. 24-UI-251689, denying claimant's request to reopen the hearing and leaving decision # 95054 undisturbed. On April 29, 2024, claimant filed an application for review of Order No. 24-UI-251689 with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) On October 13, 2023, notice was mailed to claimant that a hearing was scheduled for October 25, 2023, at 3:30 p.m. Claimant received the notice prior to the hearing.

(2) On October 25, 2023, claimant dialed the telephone number listed on the notice to appear beginning at 3:27 p.m. The call did not connect, and claimant dialed the number eleven more times without connecting. Claimant failed to appear at the hearing for this reason.

**CONCLUSIONS AND REASONS:** Claimant's request to reopen the October 25, 2023, hearing is allowed and a hearing on the merits of decision # 95054 is required.

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). For telephone hearings, good cause includes “unanticipated, and not reasonably foreseeable, loss of telephone service.” OAR 471-040-0040(2)(a)(B).

Claimant’s request to reopen was filed on November 17, 2023, within 20 days of the date Order No. 23-UI-240273 was issued, and contained a statement explaining why she missed the October 25, 2023, hearing. Claimant therefore met the threshold requirements for consideration of her request.

Claimant failed to appear at the telephone hearing because her telephone calls would not connect, for unknown reasons. The order under review concluded that claimant’s inability to complete the calls did not constitute a circumstance beyond her reasonable control or an excusable mistake. Order No. 24-UI-251689 at 3-4. The record does not support this conclusion.

Claimant wrote in her request to reopen, “On October 25, 2023, I called the appeals phone number at 3:27 p.m. I called 12 times and never got a response.” Exhibit 3 at 4. The record does not reveal why claimant’s calls failed to connect. Claimant testified that her mobile phone was working at the time and calls placed to her phone connected, but it could not connect to any number listed on the notice of hearing when called. Audio Record at 15:10 to 17:15. This suggests that telephone service problems, if the cause of the outgoing call failures, were not foreseeable. If claimant’s calls were prevented from connecting due to problems with claimant’s telephone service or the system used by OAH, this was a circumstance beyond claimant’s reasonable control, and constituted good cause under OAR 471-040-0040(2)(a)(B).

Further, if the calls failed to connect due to claimant error in dialing the number, rather than service problems, her repeated attempts prior to and during the scheduled hearing time suggest that she was unable to follow the directions in the notice of hearing despite substantial efforts to comply. Therefore, if dialing error prevented the calls from connecting, this was an excusable mistake.

As it can be inferred that claimant’s failure to appear was attributable either to telephone service problems or dialing error, she failed to appear at the hearing due to a circumstance beyond her reasonable control or an excusable mistake. Claimant therefore has shown good cause to reopen the October 25, 2023, hearing. Claimant’s request to reopen the October 25, 2023, hearing is allowed, and the matter remanded for a hearing on the merits of decision # 95054.

**DECISION:** Order No. 24-UI-251689 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: June 7, 2024**

**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](https://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.

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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.

**Employment Appeals Board - 875 Union Street NE | Salem, OR 97311**  
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711  
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