

**EMPLOYMENT APPEALS BOARD DECISION**  
**2024-EAB-0434**

*Reversed*  
*Late Request for Hearing Allowed*  
*Merits Hearing Required*

**PROCEDURAL HISTORY:** On February 13, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged by the employer for misconduct and disqualified from receiving benefits effective December 31, 2023 (decision # 122006). On March 4, 2024, decision # 122006 became final without claimant having filed a request for hearing. On March 14, 2024, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on April 1, 2024, issued Order No. 24-UI-251229, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by April 15, 2024. On April 9, 2024, claimant filed a timely response to the appellant questionnaire.

On April 15, 2024, the Office of Administrative Hearings (OAH) mailed the parties a letter stating that Order No. 24-UI-251229 was vacated and that a hearing would be scheduled to determine whether to allow claimant's late request for hearing and, if so, the merits of decision # 122006. On April 30, 2024, ALJ Janzen conducted the hearing at which the employment department did not appear or submit an attestation, and on May 1, 2024, issued Order No. 24-UI-253242, re-dismissing claimant's request for hearing as late without good cause and leaving decision # 122006 undisturbed. On May 8, 2024, claimant filed a timely application for review of Order No. 24-UI-253242 with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Decision # 122006, mailed to claimant's address of record on file with the Department on February 13, 2024, 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 March 4, 2024." Exhibit 1 at 2.

(2) Claimant has a disability that limits her to "a third grade reading level." Audio Record at 12:00.

(3) On February 19, 2024, claimant received decision # 122006. Claimant attempted to read the decision but was unable to understand the procedure for requesting a hearing on the decision.

(4) On March 14, 2024, claimant went to a WorkSource office to, among other things, express her disagreement with the conclusions of decision # 122006. Claimant was assisted in making a late request for hearing by fax at that time.

**CONCLUSIONS AND REASONS:** Claimant's late request for hearing is allowed and a hearing on the merits of decision # 122006 is required.

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 request for hearing on decision # 122006 was due by March 4, 2024. Because claimant filed her request for hearing on March 14, 2024, it was filed late. The order under review concluded that claimant's failure to understand her appeal rights due to a limited ability to read was not an excusable mistake because claimant failed to seek assistance in understanding the decision prior to the appeal deadline. Order No. 24-UI-253242 at 3. The record does not support this conclusion.

Claimant testified that she received decision # 122006 on February 19, 2024. Audio Record at 10:15. Claimant was limited in what she could understand of the decision based on a disability that limited her reading comprehension to a third-grade level. When asked at hearing to explain why she did not immediately attempt to request a hearing, claimant testified that she was "not aware of how to do it" because of the reading disability. Audio Record at 11:30. At hearing claimant testified that she "didn't know" that she could appeal the decision, apparently because she did not understand other parts of the decision. Audio Record at 13:37. It can reasonably be inferred that claimant's lack of understanding regarding the appeal procedure extended to not understanding the deadline for appealing and how to comply with the deadline. Therefore, claimant did not know to seek assistance in understanding the decision and her appeal rights by March 4, 2024. In light of claimant's reading disability, her failure to understand the appeal deadline and seek assistance in understanding the decision and filing a request for hearing by that date was an excusable mistake.

The factor that prevented timely filing did not cease until claimant went to a WorkSource office for assistance on March 14, 2024. Because claimant filed her late request for hearing the same day, it was filed within a "reasonable time" after the factor that prevented timely filing ceased. Claimant therefore has shown good cause to extend the deadline for timely filing to March 14, 2024. Accordingly, the late request for hearing is allowed, and the matter is remanded for a hearing on the merits of decision # 122006.

**DECISION:** Order No. 24-UI-253242 is set aside, and this matter remanded for further proceedings consistent with this order.

S. Serres and A. Steger-Bentz;  
D. Hettle, dissenting.

**DATE of Service: June 24, 2024**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-253242 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 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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