

**EMPLOYMENT APPEALS BOARD DECISION**  
**2024-EAB-0519**

*Reversed & Remanded*

**PROCEDURAL HISTORY AND FINDINGS OF FACT:** On March 5, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing a \$1,095 overpayment that claimant was required to repay to the Department, a \$219 monetary penalty, and a 7-week penalty disqualification from future benefits (decision # 194245). On March 25, 2021, decision # 194245 became final without claimant having filed a request for hearing. On February 3, 2022, the Department served notice of an administrative decision denying claimant's request to waive recovery of the overpayment (decision # 132632). On February 23, 2022, decision # 132632 became final without claimant having filed a request for hearing. On February 22, 2024, claimant filed late requests for hearing on decisions # 194245 and 132632.

ALJ Scott considered the request on decision # 194245, and on February 28, 2024, issued Order No. 24-UI-249096, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by March 13, 2024. ALJ Scott considered the request on decision # 132632, and on February 29, 2024, issued Order No. 24-UI-249153, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by March 14, 2024. On March 19, 2024, and March 20, 2024, respectively, Orders No. 24-UI-249096 and 24-UI-249153 became final without claimant having filed responses to the appellant questionnaires or applications for review with the Employment Appeals Board (EAB). On May 31, 2024, claimant filed late responses to the appellant questionnaires.

ALJ Kangas considered the responses, and on June 6, 2024, issued Orders No. 24-UI-255863 and 24-UI-255868, cancelling Orders No. 24-UI-249096 and 24-UI-249153, respectively, and re-dismissing the late requests for hearing on decisions # 194245 and 132632. On June 26, 2024, claimant filed timely applications for review of Orders No. 24-UI-255863 and 24-UI-255868 with EAB.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 24-UI-255863 and 24-UI-255868. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2024-EAB-0519 and 2024-EAB-0520).

**WRITTEN ARGUMENT:** EAB considered claimant's written arguments in reaching this decision.

**CONCLUSIONS AND REASONS:** Orders No. 24-UI-255863 and 24-UI-255868 are set aside, and these matters remanded for a hearing to determine whether claimant's late requests for hearing on decisions # 194245 and 132632 should be allowed and, if so, the merits of those decisions.

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 requests for hearing on decisions # 194245 and 132632 were due by March 25, 2021, and February 23, 2022, respectively. Because claimant filed their requests for hearing on February 22, 2024, the requests were late. Claimant's appellant questionnaire response and written argument suggest that claimant filed a new initial claim for unemployment insurance benefits in January 2024, but was not immediately paid benefits for some weeks of that claim. *See* Exhibit 3 at 15, Claimant's June 26, 2024, Written Argument at 1. It appears that claimant believed that the issue delaying or preventing payment was related to their ability to work or availability for work, and that claimant filed the February 22, 2024, request for hearing in an attempt to remedy that issue. Exhibit 2 at 2. However, the Department's records suggest that no administrative decision had yet been issued that concluded claimant was ineligible for benefits on the basis of ability to work or availability for work with regard to the January 2024 claim.<sup>1</sup> For that reason, the Office of Administrative Hearings (OAH) construed claimant's February 22, 2024 request as late requests for hearing on decisions # 194245 and 132632, which were the most recent adverse decisions issued to claimant that claimant had not appealed.<sup>2</sup>

Further development of the record is warranted to determine whether claimant's late requests for hearing should be allowed. As a preliminary matter, inquiry should be made as to whether claimant intended that their February 22, 2024 request for hearing be construed as late requests for hearing on decisions # 194245 and 132632, which involve a claim initially filed on August 5, 2020.<sup>3</sup> If so, inquiry should be made on remand as to whether and when claimant received those decisions, whether claimant disagreed with them, when they first attempted to file a request for hearing on them, and what factors or circumstances prevented or delayed timely filing of requests for hearing, if any.

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<sup>1</sup> EAB has taken notice of this fact which is contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). Any party that objects to our taking notice of this information 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 noticed fact will remain in the record.

<sup>2</sup> It should be noted that these administrative decisions could also be partially responsible for the nonpayment of benefits on the 2024 claim, since the penalty disqualification weeks, followed by offsets to satisfy the overpayment, would have occurred if claimant was otherwise eligible for benefits for weeks claimed.

<sup>3</sup> If not, claimant may wish to inquire with the Department or OAH about requesting hearings on any administrative decisions issued after his request for hearing was filed. **For example, decision # L0003140617, issued March 15, 2024, concluded that claimant was ineligible to receive benefits because he was unable to work, and has not been appealed.**

If good cause is found to extend the deadline for timely filing hearing requests on those decisions, further inquiry should be made into when the factors that prevented timely filing ceased, and whether the late requests for hearing were filed within a “reasonable time” thereafter. Regarding decision # 194245, which assessed the overpayment, the record shows that claimant filed a waiver request on September 17, 2021, suggesting that claimant was aware of the overpayment decision by that date. Therefore, the reasonable time inquiry should include whether claimant had notice on or before September 17, 2021, that they had the right to request a hearing on decision # 194245.

For these reasons, Orders No. 24-UI-255863 and 24-UI-255868 are set aside and the matters remanded for hearings to determine whether claimant’s late requests for hearing on decisions # 194245 and 132632 should be allowed and, if so, the merits of those decisions.

**DECISION:** Orders No. 24-UI-255863 and 24-UI-255868 are set aside, and these matters remanded for further proceedings consistent with this order.

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

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

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Orders No. 24-UI-255863 and 24-UI-255868 or return these matters to EAB. Only timely applications for review of the subsequent orders will cause these 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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