

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0587

*Reversed – Request for Hearing Timely Filed
Merits Hearing Required*

PROCEDURAL HISTORY: On April 17, 2024, the Oregon Employment Department (the Department) served notice of a Wage and Potential Benefit Report (WPBR) concluding that claimant’s weekly benefit amount was \$551, maximum benefit amount was \$14,326, and the benefit year started April 14, 2024 (decision # L0003676674). On April 26, 2024, claimant filed a timely request for hearing on decision # L0003676674 by sending the Department a message through Frances Online. However, the Department did not recognize claimant’s April 26, 2024, message as a request for hearing. On April 29, 2024, the deadline to file a timely request for hearing on decision # L0003676674 passed. Because it had not recognized claimant’s April 26, 2024, message as a request for hearing, the Department regarded decision # L0003676674 as having become final without claimant having filed a request for hearing. On May 1, 2024, claimant filed a second request for hearing on decision # L0003676674. The Department regarded claimant’s second request for hearing as late because it was filed after the April 29, 2024, deadline.

ALJ Scott considered claimant’s second hearing request, and on July 17, 2024, issued Order No. 24-UI-259376, dismissing claimant’s request for hearing as late, subject to claimant’s right to renew the request by responding to an appellant questionnaire by July 31, 2024. On August 6, 2024, claimant filed a timely application for review of Order No. 24-UI-259376 along with screenshots from Frances Online showing that they had filed a timely request for hearing on decision # L0003676674 on April 26, 2024, which EAB considered to be equivalent to a late response to the appellant questionnaire. This matter comes before EAB based upon claimant’s August 6, 2024, application for review of Order No. 24-UI-259376.

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of claimant’s screenshots from Frances Online showing that they had filed a timely request for hearing on decision # L0003676674 on April 26, 2024, which EAB considers to be equivalent to a late response to the appellant questionnaire. These documents have 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.

FINDINGS OF FACT: (1) On April 17, 2024, the Department mailed decision # L0003676674 to claimant's address on file with the Department. Decision # L0003676674 stated, "You have the right to appeal our decision and request a hearing if you believe our decision is wrong. We must receive your request for a hearing no later than April 29, 2024." Exhibit 1 at 2.

(2) On April 26, 2024, claimant filed a timely request for hearing on decision # L0003676674 by sending the Department a message through Frances Online. EAB Exhibit 1 at 5.

CONCLUSIONS AND REASONS: Claimant timely filed a request for hearing on decision # L0003676674. A hearing on the merits of decision # L0003676674 is required.

ORS 657.266(5) provides that the Department's initial determination on a new claim for benefits becomes final unless a party files a request for hearing within 10 days after the date the determination is mailed. ORS 657.875 provides that the 10-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.

Under OAR 471-040-0005(1) (July 15, 2018), "A Request for hearing may be filed on forms provided by the Employment Department or similar offices in other states. Use of the form is not required provided the party specifically requests a hearing or otherwise expresses a present intent to appeal and it can be determined what issue or decision is being appealed."

The deadline to file a request for hearing on decision # L0003676674 was April 29, 2024. Because claimant filed their request for hearing on decision # L0003676674 on April 26, 2024, claimant filed a timely request for hearing.

The information submitted by claimant shows that on April 26, 2024, at 12:44 p.m., they sent a message to the Department through Frances Online with the subject "Appeal Request." EAB Exhibit 1 at 5. In the body of the message, claimant wrote "Thank you for your Approval of my Unemployment claim. I request an Appeal of the claim start date." EAB Exhibit 1 at 5.¹

By stating "I request an Appeal of the claim start date[,]" claimant expressed a present intent to appeal. EAB Exhibit 1 at 5. It can be determined that the decision claimant wished to appeal is decision # L0003676674, the WPBR that established claimant had a valid claim for benefits. This is so because claimant stated, "Thank you for your Approval of my Unemployment claim," an evident reference to decision # L0003676674's determination that claimant had a valid claim for benefits, and then in the

¹ The message went on to state, "I am requesting Unemployment benefits for the week of April 7, 2024-April 13, 2024." EAB Exhibit 1 at 5. Employment Department records indicate claimant received waiting week credit for that week on August 17, 2024. 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.

next sentence stated that they were requesting an appeal. EAB Exhibit 1 at 5. Thus, on April 26, 2024, claimant expressed to the Department, via Frances Online, a present intent to appeal decision # L0003676674 and that constituted a timely request for hearing on decision # L0003676674.

Order No. 24-UI-259376 therefore is reversed, and claimant is entitled to a hearing on the merits of decision # L0003676674.

DECISION: Order No. 24-UI-259376 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: August 21, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-259376 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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.



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
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.