

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0591-R

Requests for Reconsideration Allowed
EAB Decisions 2024-EAB-0590 and 2024-EAB-0591 Adhered to on Reconsideration

PROCEDURAL HISTORY: On January 5, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant failed to provide information in accordance with the Department's rules and was therefore ineligible to receive unemployment insurance benefits for the weeks of December 17, 2023, through December 30, 2023 (weeks 51-23 through 52-23) and until the reason for the denial had ended (decision # 142846). Also on January 5, 2024, the Department issued an administrative decision concluding that claimant failed to register for work in accordance with the Department's rules and was therefore ineligible to receive unemployment insurance benefits for the week of December 17, 2023, through December 23, 2023 (week 51-23) and until the reason for the denial had ended. Claimant filed a timely request for hearing on each decision.

On February 14, 2024, notice was mailed to claimant that a consolidated hearing on both decisions was scheduled for February 29, 2024. Claimant failed to appear at the hearing, and on March 1, 2024, ALJ Chiller issued Orders No. 24-UI-249226 and 24-UI-249222, dismissing decision # 142846 and the January 5, 2024, work registration decision, respectively, due to claimant's failure to appear. On March 21, 2024, Orders No. 24-UI-249226 and 24-UI-249222 became final without claimant having filed a request to reopen the hearing. On July 26, 2024, claimant filed a late request to reopen the February 29, 2024, hearing. ALJ Kangas considered the request, and on August 5, 2024, issued Orders No. 24-UI-261534 and 24-UI-261540, denying the request and leaving Orders No. 24-UI-249226 and 24-UI-249222 undisturbed. On August 14, 2024, claimant filed applications for review of Orders No. 24-UI-261534 and 24-UI-261540 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 24-UI-261534 and 24-UI-261540. On August 29, 2024, EAB issued EAB Decisions 2024-EAB-0590 and 2024-EAB-0591, affirming Orders No. 24-UI-261534 and 24-UI-261540, respectively. On September 3, 2024, claimant filed timely requests for reconsideration of EAB Decisions 2024-EAB-0590 and 2024-EAB-0591. These decisions are issued pursuant to EAB's authority under ORS 657.290(3).

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is claimant’s request for reconsideration and has 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 February 14, 2024, notice of a consolidated hearing on both administrative decisions was mailed to claimant’s address of record on file with the Office of Administrative Hearings (OAH). The hearing was scheduled for February 29, 2024.

(2) On February 29, 2024, claimant failed to appear for the hearing because they did not open or did not read the notice of hearing and did not know that the hearing was taking place. On March 1, 2024, Orders No. 24-UI-261534 and 24-UI-261540 were mailed to claimant’s address of record, dismissing claimant’s requests for hearing due to their failure to appear. On March 21, 2024, Orders No. 24-UI-249226 and 24-UI-249222 became final without claimant having filed a request to reopen the hearing. On July 26, 2024, claimant filed a late request to reopen the February 29, 2024, hearing.

(3) On August 29, 2024, EAB issued EAB Decisions 2024-EAB-0590 and 2024-EAB-0591, affirming Orders No. 24-UI-261534 and 24-UI-261540. On September 3, 2024, claimant filed requests for reconsideration of EAB Decisions 2024-EAB-0590 and 2024-EAB-0591.

CONCLUSIONS AND REASONS: Claimant’s requests for reconsideration are allowed. EAB Decisions 2024-EAB-0590 and 2024-EAB-0591 are adhered to on reconsideration.

Reconsideration. ORS 657.290(3) authorizes the Employment Appeals Board to reconsider any previous decision of the Employment Appeals Board, including “the making of a new decision to the extent necessary and appropriate for the correction of previous error of fact or law.” “Any party may request reconsideration to correct an error of material fact or law, or to explain any unexplained inconsistency with Employment Department rule, or officially stated Employment Department position, or prior Employment Department practice.” OAR 471-041-0145(1) (May 13, 2019). The request is subject to dismissal unless it includes a statement that a copy was provided to the other parties, and is filed on or before the 20th day after the decision sought to be reconsidered was mailed. OAR 471-041-0145(2).

Claimant’s requests for reconsideration were filed within 20 days of the date EAB Decisions 2024-EAB-0590 and 2024-EAB-0591 were mailed, and were made to correct an error of material fact or law. Accordingly, claimant’s requests for reconsideration are allowed. However, EAB Decisions 2024-EAB-0590 and 2024-EAB-0591 are adhered to on reconsideration, as clarified herein.

Late request to reopen. 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 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) (February 10, 2012).

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).

The request to reopen the February 29, 2024, consolidated hearing was due by March 21, 2024. Because claimant’s request to reopen was filed on July 26, 2024, the request was late. Claimant wrote in their requests for reconsideration, “I failed to complete the hearings because I received so much mail through unemployment.” EAB Exhibit 1 at 1. While this may explain why claimant failed to appear at the hearing, claimant did not explain why the request to reopen was not filed by the March 21, 2024, deadline. To the extent claimant’s failure to timely open and read mail from the Department or OAH may have caused both claimant’s failure to appear at the hearing and the late filing of claimant’s request to reopen, claimant has not shown that this was a circumstance beyond claimant’s reasonable control. Claimant also mentioned experiencing “mental health issues” in August 2024, but as claimant’s late request to reopen was filed in July 2024, it does not appear that claimant is asserting that this prevented timely filing. EAB Exhibit 1 at 1. Therefore, good cause to allow claimant’s late request to reopen has not been shown. Accordingly, EAB Decisions 2024-EAB-0590 and 2024-EAB-0591 are adhered to on reconsideration.

DECISION: Claimant’s requests for reconsideration are allowed. On reconsideration, EAB Decisions 2024-EAB-0590 and 2024-EAB-0591 are adhered to as clarified herein.

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

DATE of Service: September 20, 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. 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.

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 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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