

**EMPLOYMENT APPEALS BOARD DECISION**  
**2024-EAB-0641**

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

**PROCEDURAL HISTORY:** On March 12, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and was therefore disqualified from receiving unemployment insurance benefits effective January 28, 2024. (decision # L0003036098). On March 25, 2024, claimant filed a timely request for hearing on decision # L0003036098 that the Department did not recognize as a request for hearing. On April 1, 2024, decision # L0003036098 became final without the Department or the Office of Administrative Hearings (OAH) having recognized that claimant had filed a timely request for hearing. On April 18, 2024, claimant filed another request for hearing on decision # L0003036098. ALJ Kangas considered claimant's April 18, 2024, hearing request, and on May 23, 2024 issued Order No. 24-UI-254923, dismissing claimant's April 18, 2024 request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by June 6, 2024. On June 5, 2024, claimant filed a timely response to the appellant questionnaire. On July 23, 2024, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 24-UI-254923 was vacated and that a new hearing would be scheduled to determine whether claimant had good cause to file the late request for hearing and, if so, the merits of decision # L0003036098. On August 15, 2024, ALJ Strauch conducted a hearing at which the Department and the employer failed to appear, and on August 20, 2024, issued Order No. 24-UI-263163, dismissing claimant's request for hearing as late without good cause and leaving decision # L0003036098 undisturbed. On September 9, 2024, claimant filed an application for review of Order No. 24-UI-263163 with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** EAB did not consider Claimant's written argument when reaching this decision because he did not include a statement declaring that he provided a copy of his argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019).

**FINDINGS OF FACT:** (1) At some point prior to March 12, 2024, claimant informed the Department that it may provide notice of documents relating to claimant's unemployment insurance claim via U.S. mail or via Frances Online.

(2) On March 11, 2024, claimant took his computer to a shop for repairs.

(3) On March 12, 2024, the Department issued decision # L0003036098, which concluded that claimant had been discharged for misconduct on January 31, 2024, by the employer, XPO Logistics Freight, Inc., and therefore was disqualified from receiving benefits effective January 28, 2024.

(4) The Department placed an electronic copy of decision # L0003036098 in a location accessible to claimant in his Frances Online profile. The Department did not mail a copy of decision # L0003036098 to claimant. Although claimant had informed the Department that he may receive notice of documents via U.S. mail or via Frances Online, claimant expected a copy of an administrative decision adjudicating his separation from the employer to be mailed to his residence.

(5) Decision # L0003036098 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 1, 2024.” Exhibit 1 at 1-2. Decision # L0003036098 also stated that claimant may request a hearing by using Frances Online, by mailing a request to the Department, or by calling the Department. Exhibit 1 at 2.

(6) On March 18, 2024, claimant got his computer out of the shop. That day, claimant used his computer to access his Frances Online profile and make a weekly claim for benefits for the week of March 10, 2024, through March 16, 2024 (week 11-24). On that day or shortly thereafter, claimant saw a weekly benefit status letter on Frances Online advising that he had been denied benefits for week 11-24. Claimant did not receive benefits for that week.

(7) Beginning on or about March 18, 2024, claimant attempted on multiple occasions to call the Department about his denial of benefits. However, due to high call volume, claimant could not get through to a representative.

(8) On March 25, 2024, claimant again attempted to call the Department and got through to a representative. Claimant told the representative that he “never g[o]t any mails” and that he did not “know what’s going on in [his] case.” Audio Record at 39:20. The representative transferred claimant to another representative for “further assistance about claim status issues/denials.”<sup>1</sup> Claimant explained to this representative the circumstances of his separation from work from the employer. The representative memorialized claimant’s statements as follows:

claimant states they resigned from their job after an illness due to COVID and did not call out sick properly as their phone had been stolen, employer fired them at that point.<sup>2</sup>

---

<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> EAB has taken notice of these facts, which are contained in Employment Department records OAR 471-041-0090(1). 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.

(9) The Department did not recognize claimant's March 25, 2024, call as a request for hearing on decision # L0003036098. On April 1, 2024, decision # L0003036098 became final. On April 18, 2024, claimant saw the electronic copy of decision # L0003036098 in his Frances Online profile and filed a late request for hearing on decision # L0003036098.

**CONCLUSIONS AND REASONS:** Claimant's phone call to the Department on March 25, 2024, constituted a timely request for hearing on decision # L0003036098. Order No. 24-UI-263163 is reversed, and a hearing on the merits of decision # L0003036098 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 order under review dismissed claimant's April 18, 2024, request for hearing on decision # L0003036098 as late without good cause. Order No. 24-UI-263163 at 2-3. While the April 18, 2024, request for hearing was late, the record nevertheless shows that claimant's March 25, 2024 phone call to the Department constituted a timely request for hearing. Because claimant filed a timely request for hearing, claimant is entitled to a hearing on the merits of decision # L0003036098.

Under OAR 471-040-0005(2)(a) (July 15, 2018), an individual may request a hearing on an administrative decision related to payment of benefits by "mail, fax, e-mail, or other means as designated by [the] Employment Department[.]" Use of forms provided by the Department or similar offices for requesting a hearing is not required so long as the individual "expresses a present intent to appeal and it can be determined what issue . . . is being appealed." OAR 471-040-0005(1).

On March 25, 2024, after receiving a notice via a status letter that his benefits for week 11-24 were denied, claimant called the Department about the denial of his benefits. March 25, 2024, was during decision # L0003036098's timely filing period. In that call, claimant spoke to a representative and told them that he did not "know what's going on in [his] case." Audio Record at 39:20. That representative transferred claimant to another representative for a purpose the representative memorialized as "further assistance about claim status issues/denials." Claimant then explained to the second representative the circumstances of his separation from work from the employer, which caused the representative to memorialize that claimant had stated that "they resigned from their job after an illness due to COVID and did not call out sick properly as their phone had been stolen, employer fired them at that point."

Given that claimant was aware that he had been denied benefits at the time of the call, that the call included a transfer to a second representative to provide further assistance to claimant regarding his denial of benefits, and that claimant provided extensive information to the second representative that appeared to challenge the conclusion that he had been discharged for misconduct according to the administrative decision because he "violated company policy by not using standard call-out procedures for missing a shift prior to shift start time," the above evidence is sufficient to conclude that claimant expressed a present intent to appeal during the March 25, 2024 call. Exhibit 1 at 1. Furthermore, the above evidence is sufficient to determine that the issue being appealed was claimant's work separation

from the employer, the subject of decision # L0003036098. Finally, claimant's March 25, 2024, hearing request was made via phone call to the Department, a method of filing an appeal that was designated by the Department in decision # L0003036098. *See* Exhibit 1 at 2. Accordingly, claimant's March 25, 2024, call with the Department was a timely request for hearing, and a hearing on the merits of decision # L0003036098 is required.

**DECISION:** Order No. 24-UI-263163 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:** September 24, 2024

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-263163 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، می توانید 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](http://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.