

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0646-R

Request for Reconsideration Allowed
Late Application for Review Allowed
Order No. 23-UI-240412 Reversed
Late Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On April 24, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant failed to register for work in accordance with the Department's rules and therefore was ineligible to receive unemployment insurance benefits for the week of April 2, 2023, through April 8, 2023 (week 14-23), and until the reason for the denial had ended. On May 15, 2023, the April 24, 2023, administrative decision became final without claimant having filed a request for hearing. On May 31, 2023, claimant filed a late request for hearing.

ALJ Kangas considered claimant's request, and on November 6, 2023, issued Order No. 23-UI-240412, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by November 20, 2023. On November 27, 2023, Order No. 23-UI-240412 became final without claimant having filed a response to the appellant questionnaire or an application for review with the Employment Appeals Board (EAB). On September 5, 2024, claimant sent an email to the Office of Administrative Hearings (OAH) that EAB construed as an application for review of Order No. 23-UI-240412.

On September 27, 2024, EAB issued EAB Decision 2024-EAB-0646, dismissing claimant's late application for review without prejudice, subject to their right to request reconsideration and provide additional evidence to EAB regarding the reasons for filing the application for review late. On October 16, 2024, claimant filed a timely request for reconsideration of EAB Decision 2024-EAB-0646.

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, which consists of claimant's late application for review questionnaire response and attached documents, has been marked as EAB Exhibit 2, and provided to the parties with this decision. Any party that objects to EAB taking notice of this information must send their objection to EAB in

writing, saying why they object, within ten days of EAB mailing this decision. OAR 471-041-0090(2). Unless EAB receives and agrees with the objection, the exhibit will remain in the record.

FINDINGS OF FACT: (1) At all times relevant to this decision, claimant was experiencing homelessness. Claimant suffered from minor brain damage, which caused them to have problems with memory and organization. Claimant also was in an “unsafe” relationship from March 2023 through October 2023. EAB Exhibit 2 at 3. The unsafe relationship limited claimant’s ability to sleep or access food during that period.

(2) On April 18, 2023, the Department issued decision # 140333, an administrative decision which concluded that claimant voluntarily quit work without good cause and was disqualified from receiving benefits effective February 26, 2023.¹

(3) On April 24, 2023, the Department mailed the April 24, 2023, administrative decision to claimant’s address of record on file with the Department. The April 24, 2023, administrative decision concluded that claimant failed to register for work in accordance with the Department’s rules and therefore was ineligible to receive benefits beginning the week of April 2, 2023 through April 8, 2023 (week 14-23). The April 24, 2023, administrative decision 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 **05/15/2023.**” Exhibit 1 at 1 (emphasis in original).

(4) Because of claimant’s homelessness, a former neighbor collected claimant’s mail. The neighbor threw away the April 24, 2023, administrative decision and claimant never received it.

(5) On May 10, 2023, claimant used the Department’s Zendesk web form system to file a request for hearing on decision # 140333, the voluntary quit decision. The request for hearing on the voluntary quit decision was late.²

(6) On May 21, 2023, claimant called the Department about the appeal of the voluntary quit decision. During the call, a Department representative informed claimant of the existence of the April 24, 2023, administrative decision. The representative told claimant that if they registered for work, their denial of benefits for weeks claimed, “would be reversed.” EAB Exhibit 2 at 1. During the call, the representative did not explain that claimant had the right to appeal the April 24, 2023, administrative decision and that claimant was required to file separate requests for hearing on each administrative decision they wished to appeal. The representative did not explain that the request for hearing claimant filed on May 10, 2023, would only address the voluntary quit decision and would not apply to the failure to register decision.

¹ EAB has taken notice of these facts, which are contained in Employment Department records. OAR 471-041-0090(1). Any party that objects to EAB taking notice of this information must send their objection to EAB in writing, stating why they object, within ten days of EAB mailing this decision. OAR 471-041-0090(2). Unless EAB receives and agrees with the objection, the noticed facts will remain in the record.

² EAB has taken notice of the facts contained in this paragraph, which are contained in Employment Department records. OAR 471-041-0090(1). Any party that objects to EAB taking notice of this information must send their objection to EAB in writing, stating why they object, within ten days of EAB mailing this decision. OAR 471-041-0090(2). Unless EAB receives and agrees with the objection, the noticed facts will remain in the record.

(7) Based on the conversation, claimant understood that the April 24, 2023, administrative decision would either be addressed in a hearing with the voluntary quit decision or that upon claimant completing all of their work registration tasks, the decision would be “reversed by some internal clerical process.” EAB Exhibit 2 at 2.

(8) On May 31, 2023, claimant sent a message to the Department using the Department’s Zendesk web form system. EAB Exhibit 2 at 7. In it, claimant noted it was a follow-up to their May 10, 2023, request for hearing on the voluntary quit decision. EAB Exhibit 1 at 7. Claimant mentioned the April 24, 2023, administrative decision in the message and inquired what additional registration activities they needed to do to complete work registration. EAB Exhibit 1 at 7. The Department treated this message as a late request for hearing on the April 24, 2023, administrative decision. Exhibit 2 at 2.

(9) On June 14, 2023, claimant completed their work registration tasks. On June 16, 2023, claimant emailed OAH inquiring about the status of their appeals of the voluntary quit decision and the failure to register decision. EAB Exhibit 2 at 12-13. On June 20, 2023, an OAH representative sent a reply email. The representative stated, “Because the appeals were late, they were sent to the Judge’s “Direct Review” queue for processing. Once a decision has been made, we will issue a document in the mail with next steps. There is nothing more that you need to do with us to get these processed.” EAB Exhibit 2 at 12.

(10) Though claimant’s May 10, 2023, appeal of the voluntary quit decision was late, OAH did not issue an order dismissing the appeal subject to the right to renew the request by responding to an appellant questionnaire, but instead scheduled the voluntary quit appeal for hearing on October 23, 2023. Claimant failed to appear for the October 23, 2023, hearing, and the ALJ dismissed claimant’s appeal of the voluntary quit decision the same day. On October 24, 2023, claimant filed a request to reopen the October 23, 2023, hearing. Claimant’s request to reopen the October 23, 2023, hearing on the voluntary quit decision was not immediately ruled upon.³

(11) On November 6, 2023, OAH mailed Order No. 23-UI-240412 to claimant’s address of record. Order No. 23-UI-240412 stated, “You may appeal this decision by filing the attached form Application for Review with the Employment Appeals Board within 20 days of the date that this decision is mailed.” Order No. 23-UI-240412 at 2. Order No. 23-UI-240412 also stated on its certificate of mailing, “Any party may appeal this Order by filing a Request for Review with the Employment Appeals Board no later than November 27, 2023.”

(12) Due to their homelessness, claimant did not receive Order No. 23-UI-240412. On November 27, 2023, Order No. 23-UI-240412 became final without claimant having filed an application for review with EAB.

(13) Claimant continued to believe that the April 24, 2023, administrative decision would either be addressed in the same hearing as their voluntary quit decision or that the Department would reverse the denial internally since claimant had completed their work registration tasks.

³ EAB has taken notice of the facts contained in this paragraph, which are contained in Employment Department records. OAR 471-041-0090(1). Any party that objects to EAB taking notice of this information must send their objection to EAB in writing, stating why they object, within ten days of EAB mailing this decision. OAR 471-041-0090(2). Unless EAB receives and agrees with the objection, the noticed facts will remain in the record.

(14) On April 16, 2024, OAH issued an order denying claimant’s request to reopen the October 23, 2023, hearing on the voluntary quit decision. Claimant filed a timely application for review of that order. On June 11, 2024, EAB issued EAB Decision 2024-EAB-0415, which allowed claimant’s request to reopen the October 23, 2023, hearing on the voluntary quit decision, and remanded the matter for further proceedings at OAH. On July 8, 2024, a hearing was held on the voluntary quit decision. On July 15, 2024, the ALJ issued an order reversing the voluntary quit decision by concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving benefits based on the work separation. The ALJ did not address the failure to register issue at the July 8, 2024, hearing. On July 16, 2024, the Department paid claimant benefits for the weeks claimant claimed beginning with the week they completed their work registration tasks. Claimant did not receive benefits for the weeks they claimed prior to the week they completed their work registration tasks.⁴

(15) Claimant had expected to receive benefits for the weeks they claimed prior to the week they completed their work registration tasks. On or about July 29, 2024, claimant “finally understood what had happened with [their] request to appeal” the April 24, 2023, administrative decision; claimant realized “it was ignored and not addressed in [their] hearing” and “that it was not dismissed administratively[.]” EAB Exhibit 2 at 3. On July 29, 2024, claimant sent an email to the Department noting that they had completed “all the required job search activities and interviews,” explaining that they were “initially denied benefits by mistake”, and inquiring “what do I need to do to receive the benefits I applied for all along this process?” EAB Exhibit 2 at 5.

(16) On September 5, 2024, claimant sent an email to OAH that EAB construed as an application for review of Order No. 23-UI-240412. EAB Exhibit 1 at 1.

CONCLUSIONS AND REASONS: Claimant’s request for reconsideration is allowed. Claimant’s late application for review of Order No. 23-UI-240412 is allowed. Claimant’s late request for hearing on the April 24, 2023, administrative decision is allowed. This matter is remanded for a hearing on the merits of the April 24, 2023, administrative decision.

Request for Reconsideration. ORS 657.290(3) authorizes the Employment Appeals Board, upon its own motion or at the request of a party, 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.” *See also* OAR 471-041-0145(1) (May 13, 2019). The request is subject to dismissal unless it is filed on or before the 20th day after the decision sought to be reconsidered was mailed. OAR 471-041-0145(2).

EAB dismissed claimant’s late application for review without prejudice and subject to claimant filing a timely request for reconsideration within 20 days after EAB’s dismissal decision was issued. Claimant filed a request for reconsideration consistent with the requirements set forth in OAR 471-041-0145. The request for reconsideration therefore is allowed.

⁴ EAB has taken notice of the facts contained in this paragraph, which are contained in Employment Department records. OAR 471-041-0090(1). Any party that objects to EAB taking notice of this information must send their objection to EAB in writing, stating why they object, within ten days of EAB mailing this decision. OAR 471-041-0090(2). Unless EAB receives and agrees with the objection, the noticed facts will remain in the record.

Late Application for Review. An application for review is timely if it is filed within 20 days of the date that OAH mailed the order for which review is sought. ORS 657.270(6); OAR 471-041-0070(1) (May 13, 2019). The 20-day filing period may be extended a “reasonable time” upon a showing of “good cause.” ORS 657.875; OAR 471-041-0070(2). “Good cause” means that factors or circumstances beyond the applicant’s reasonable control prevented timely filing. OAR 471-041-0070(2)(a). A “reasonable time” is seven days after the circumstances that prevented the timely filing ceased to exist. OAR 471-041-0070(2)(b). A late application for review will be dismissed unless it includes a written statement describing the circumstances that prevented a timely filing. OAR 471-041-0070(3).

The application for review of Order No. 23-UI-240412 was due by November 27, 2023. Because claimant did not file their application for review until September 5, 2024, the application for review was late.

On June 14, 2023, claimant completed their work registration tasks. At that time, claimant believed that the work registration decision would either be heard along with their appeal of the voluntary quit decision or be reversed internally. Claimant emailed OAH on June 16, 2023, inquiring about the status of their appeals of the voluntary quit decision and the failure to register decision. The response claimant received reinforced the belief that the appeals of the decisions would be heard together (“Because the appeals were late, they were sent to the Judge’s “Direct Review” queue for processing”) and conditioned claimant to expect “a document in the mail with next steps.” EAB Exhibit 2 at 12. Claimant’s appeal of the voluntary quit decision was scheduled for hearing in October 2023, at which time claimant failed to appear and the next day filed a request to reopen. OAH issued Order No. 23-UI-240412 on November 7, 2023, and this apparently was the “document in the mail” that the representative referenced in their email. However, claimant did not receive the order because they were experiencing homelessness.

Approximately five months after claimant filed their request to reopen the hearing on the voluntary quit decision, in April 2024, an ALJ at OAH ruled on the reopen request, and claimant appealed that order to EAB. Claimant prevailed in that appeal and the hearing on the voluntary quit matter did not actually occur until July 8, 2024. Claimant prevailed at that hearing and, on July 16, 2024, was paid benefits for the weeks claimed beginning with the week they completed their work registration tasks.

Based on the foregoing, circumstances beyond claimant’s reasonable control prevented them from filing a timely application for review of Order No. 23-UI-240412. Claimant never received the order and so was not aware of the order or their right to file an application for review of it. The OAH representative’s June 2023 email communication did not help claimant understand that the work registration issue would not be addressed during their hearing about the voluntary quit decision or that it would not be reversed internally. Resolution of the appeal of the voluntary quit decision did not occur until July 2024, and, up to that point, it is understandable that claimant continued to believe that the work registration decision would either be heard along with their appeal of the voluntary quit decision or be reversed internally.

As of July 2024, claimant apparently began to understand that the work registration issue was still outstanding, given that the failure to register issue was not addressed at the July 8, 2024, hearing and that, on July 16, 2024, claimant received benefits but only for the weeks claimed beginning with the week they completed their work registration tasks. Indeed, on or about July 29, 2024, claimant “finally understood what had happened with [their] request to appeal” the April 24, 2023, administrative decision. EAB Exhibit 2 at 3. Claimant realized “it was ignored and not addressed in [their] hearing”

and “that it was not dismissed administratively[.]” EAB Exhibit 2 at 3. However, because the available information does not show that claimant was ever made aware of Order No. 23-UI-240412 or of their right to appeal it, or how to appeal it, the circumstances that prevented a timely filing did not end at that time.

On July 29, 2024, claimant sent an email to the Department noting that they had completed “all the required job search activities and interviews,” explaining that they were “initially denied benefits by mistake”, and inquiring “what do I need to do to receive the benefits I applied for all along this process?” EAB Exhibit 2 at 5. This communication referenced the work registration issue underlying Order No. 23-UI-240412 given its reference to “required job search activities and interviews[.]” EAB Exhibit 2 at 5. Further, it showed an intent to challenge the dismissal of claimant’s appeal of that issue given the reference to being “initially denied benefits by mistake” and claimant’s insistence that they “receive the benefits I applied for all along this process[.]” EAB Exhibit 2 at 5.

The July 29, 2024, communication therefore amounted to an intent to appeal Order No. 23-UI-240412, and is properly regarded as a late application for review of that order.⁵ Claimant’s September 5, 2024, email to OAH also met the elements of an application for review. *See* EAB Exhibit 1 at 1. As both the July 29, 2024, email and the September 5, 2024, emails constituted applications for review, the communication with a date earlier in time, the July 29, 2024 email, is used for the late application for review analysis.

Thus, claimant’s failure to receive Order No. 23-UI-240412 because of their homelessness was a factor beyond their reasonable control. Available information does not show that claimant ever received the order, meaning that the factor did not end, if it ended at all, until claimant’s July 29, 2024, application for review filing date. Claimant’s July 29, 2024, application for review was therefore filed within a seven-day “reasonable time.” Claimant established good cause to extend the deadline to file an application for review to July 29, 2024, and the late application for review is allowed.

Late Request for Hearing. 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 deadline to file a timely request for hearing on the April 24, 2023, administrative decision was May 15, 2023. Because claimant did not file a request for hearing until May 31, 2023, the request for hearing was late.

Claimant was experiencing homelessness and did not receive the April 24, 2023, administrative decision. As such, claimant was not initially aware of the decision’s existence. Claimant became aware

⁵ *See* OAR 471-041-0060(1) (May 13, 2019) (“An application for review may be filed on forms provided by OAH or the Employment Department and other similar offices in other states. Use of the form is not required, provided the applicant requests review of a specific ALJ Order, or otherwise expresses an intent to appeal an ALJ Order.”).

of the decision on May 21, 2023, during a call to the Department claimant made to discuss their appeal of the voluntary quit decision.

However, in this call, the representative did not explain that claimant had the right to appeal the April 24, 2023, administrative decision or that the April 24, 2023, administrative decision would not be addressed along with the voluntary quit decision via the May 10, 2023 request for hearing that claimant had already filed. The representative simply told claimant that if they registered for work, their denial of benefits for weeks claimed, “would be reversed.” EAB Exhibit 2 at 1. Claimant, who suffered from minor brain damage that caused problems with memory and organization and at the time was in an unsafe relationship that limited their ability to sleep and access food, understood from the conversation that the April 24, 2023, administrative decision would either be addressed in a hearing with the voluntary quit decision or that upon completing the work registration tasks, the decision would be “reversed by some internal clerical process.” EAB Exhibit 2 at 2.

The effect of claimant not being notified of their right to appeal, along with claimant’s reasonable mistaken belief that the work registration decision would either be heard along with the appeal of the voluntary quit decision or be reversed internally, and combined with claimant’s cognitive difficulties and life challenges, collectively constituted circumstances beyond claimant’s reasonable control that prevented them from filing a request for hearing by the May 15, 2023, deadline. These factors remained in effect on May 31, 2023, when claimant used the Department’s Zendesk web form system to inquire what additional registration activities they needed to do to complete work registration. The Department treated this communication as a request for hearing, which was appropriate.⁶ Thus, the factors that prevented claimant from filing a timely request for hearing, if they ended at all, did not end until May 31, 2023. As May 31, 2023, was the same day claimant filed their late request for hearing, claimant filed within a seven-day “reasonable time.” Claimant proved good cause to extend the deadline to file the request for hearing to May 31, 2023, and the late request for hearing is therefore allowed.

On reconsideration, claimant’s late application for review and late request for hearing are allowed. This matter is remanded for a hearing on the merits of the April 24, 2023, administrative decision.

DECISION: Order No. 23-UI-240412 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: November 8, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-240412 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

⁶ See 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.”).

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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 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.

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