

**EMPLOYMENT APPEALS BOARD DECISION**  
**2024-EAB-0650**

*Late Application for Review Allowed*  
*Reversed & Remanded*

**PROCEDURAL HISTORY:** On April 2, 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 ineligible for benefits for the week of March 31 through April 6, 2024 (week 14-24) and until the reason for the denial ended (decision # L0003418853).<sup>1</sup> On April 22, 2024, decision # L0003418853 became final without claimant having filed a request for hearing. On April 27, 2024, claimant filed a late request for hearing. ALJ Kangas considered the request, and on June 3, 2024, issued Order No. 24-UI-255621, dismissing the request as late, subject to claimant’s right to renew the request by responding to an appellant questionnaire by June 17, 2024. On June 24, 2024, Order No. 24-UI-255621 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 12, 2024, claimant filed a late application for review with EAB.

**EVIDENTIARY MATTER:** EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is the documents accompanying claimant’s late application for review 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) Decision # L0003418853, mailed to claimant’s address of record on file with the Department on April 2, 2024, 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 22, 2024.**” Exhibit 1 at 2 (emphasis in original). Claimant’s request for hearing was filed on April 27, 2024.

<sup>1</sup> Decision # L0003418853 stated that the ineligibility period began April 1, 2024. However, this is presumed to be a scrivener’s error, as benefit weeks begin on Sundays, and April 1, 2024, was a Monday.

(2) On June 3, 2024, Order No. 24-UI-255621 was mailed to claimant's address of record. Order No. 24-UI-255621 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. 24-UI-255621 at 2. Order No. 24-UI-255621 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 June 24, 2024."

(3) Aside from the issuance of decision # L0003418853, claimant had at least two other issues affecting her claim. One was that she had been denied benefits for the weeks of March 10 through April 27, 2024 (weeks 11-24 through 17-24) for failing to register for work (decision # L0003415229). On June 24, 2024, the Department redetermined that issue and allowed benefits for weeks 11-24 through 17-24 as to that issue. On June 26, 2024, the Department mailed claimant an order dismissing as moot her pending request for hearing on that denial. Second, claimant requested that her claim be backdated to March 10, 2024. On June 18, 2024, the Department allowed the backdating request and claimant was granted waiting week credit for week 11-24 (decision # L0004626720).<sup>2</sup>

(4) On July 1, 2024, claimant made an "Appeal Filing" in Frances Online to contest the non-payment of benefits for the weeks of March 31 through April 27, 2024 (weeks 14-24 through 17-24). Though decision # L0003418853 (regarding failure to provide identity information) was at that time the sole cause of non-payment of benefits for those weeks, claimant's filing was construed as a request for hearing on decision # L0004626720, which had allowed her backdating request. Order No. 24-UI-261524, issued August 5, 2024, dismissed the request for hearing as failing to present a justiciable controversy, and claimant's subsequent application for review of that order resulted in EAB issuing EAB Decision 2024-EAB-0630 on September 11, 2024, affirming the dismissal on the same grounds.<sup>3</sup>

(5) On July 12, 2024, claimant received Order No. 24-UI-255621. Later that day, claimant emailed a response to the appellant questionnaire to the Office of Administrative Hearings (OAH). OAH either failed to receive the email or failed to process it as a late response to the appellant questionnaire in this matter.

(6) On September 12, 2024, claimant filed a late application for review of Order No. 24-UI-255621.

**CONCLUSIONS AND REASONS:** Claimant's late application for review is allowed. Order No. 24-UI-255621 is set aside and the matter remanded for a hearing to determine whether to allow claimant's late request for hearing on decision # L0003418853 and, if so, the merits of that decision.

**Late application for review.** An application for review is timely if it is filed within 20 days of the date that the Office of Administrative Hearings (OAH) mailed the order for which review is sought. ORS

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<sup>2</sup> EAB has taken notice of these facts which are 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>3</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.

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. 24-UI-255621 was due by June 24, 2024. Claimant filed her application for review on September 12, 2024, and it was therefore filed late.

Claimant’s late application for review included a copy of her July 12, 2024, email to OAH, and the statement, “I received the Appellate Questionnaire on July 12<sup>th</sup> and submitted my response to you all on July 12<sup>th</sup>[.]” EAB Exhibit 1 at 1, 4. It is unclear from the record what delayed delivery of Order No. 24-UI-255621 and the attached appellant questionnaire. However, it is reasonable to infer that the delay was a circumstance beyond claimant’s control that prevented timely filing of the application for review. Further, the failure of OAH to receive or acknowledge receipt of the late appellant questionnaire response was an additional circumstance beyond claimant’s control that continued to delay filing beyond July 12, 2024, as claimant presumably took no further action to appeal while believing that OAH was considering her response. Moreover, even if claimant had been aware of Order No. 24-UI-255621 through other means prior to the timely filing deadline, conflicting or confusing information provided by the Department likely led claimant to mistakenly believe that the issue under appeal had been resolved favorably through reconsideration. This also constituted a factor beyond claimant’s reasonable control. Good cause has therefore been shown to extend the deadline for timely filing.

More likely than not, the circumstances that prevented timely filing did not end until September 11, 2024, when claimant received EAB Decision 2024-EAB-0630, alerting claimant to the facts that both OAH and EAB considered Order No. 24-UI-255621 to have become final without an appellant questionnaire response or application for review having been filed, and that her ineligibility for benefits for weeks 14-24 through 17-24 had not been reconsidered by the Department. Because claimant filed the late application for review a day later, on September 12, 2024, it was filed within a “reasonable time” after the circumstances that prevented timely filing ended. Accordingly, claimant’s late application for review of Order No. 24-UI-255621 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 request for hearing on decision # L0003418853 was due by April 22, 2024. Claimant filed her request for hearing on April 27, 2024, and it was therefore filed late.

On July 12, 2024, claimant attempted to file by email a response to the appellant questionnaire explaining why the request for hearing was filed late. However, as previously mentioned, this

submission was never made a part of the record, and claimant's answers to the appellant questionnaire remain unknown. In her late request for hearing, claimant wrote, "Family illnesses created delay in meeting deadline for worksorce." Exhibit 2 at 4. While claimant was likely referring to the reason for failing to timely verify her identity, given the timeframe involved it is possible this was also a factor that prevented her from timely filing a request for hearing. Further, the record suggests that in making determinations on other issues affecting claimant's eligibility for benefits in March and April 2024, the Department may have provided information that was inaccurate or confusing, perhaps giving rise to an excusable mistake as to whether the denial of benefits had been reconsidered regarding the identity verification issue prior to the timely filing deadline. Therefore, further development of the record is warranted to determine whether good cause exists to extend the timely filing deadline.

On remand, inquiry should be made into whether and when claimant received decision # L0003418853, whether she disagreed with it, and what factors or circumstances, if any, prevented timely filing of a request for hearing. If possible, a Department representative should be asked about what information was provided to claimant regarding the status of this and other administrative decisions affecting her claim during the timely filing period, and whether such information caused claimant to mistakenly believe that filing a request for hearing was unnecessary because the matter had been reconsidered.

If good cause is found to extend the deadline for timely filing, because claimant's late request for hearing was filed within seven days of the timely filing deadline, it was necessarily filed within a "reasonable time" after the factors that prevented timely filing ceased.

For these reasons, claimant's late application for review is allowed. Order No. 24-UI-255621 is set aside and the matter remanded for a hearing to determine whether to allow claimant's late request for hearing on decision # L0003418853 and, if so, the merits of that decision.

**DECISION:** Claimant's late application for review is allowed. Order No. 24-UI-255621 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 25, 2024

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-255621 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter 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.

**Employment Appeals Board - 875 Union Street NE | Salem, OR 97311**  
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