

**EMPLOYMENT APPEALS BOARD DECISION**  
**2024-EAB-0684**

*Application for Review Timely Filed  
Reversed & Remanded*

**PROCEDURAL HISTORY:** On March 19, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and therefore was disqualified from receiving unemployment insurance benefits effective January 17, 2024 (decision # L0003169481).<sup>1</sup> Claimant filed a timely request for hearing. On May 3, 2024, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for May 17, 2024. On May 17, 2024, claimant failed to appear at the hearing, and ALJ Contreras issued Order No. 24-UI-254479, dismissing claimant's request for hearing due to claimant's failure to appear. On June 6, 2024, Order No. 24-UI-254479 became final without claimant having filed a request to reopen the hearing. On June 17, 2024, claimant filed a late request to reopen the May 17, 2024, hearing. An ALJ considered claimant's late request to reopen, but on June 24, 2024, erroneously issued Order No. 24-UI-257237, which was functionally a duplicate of Order No. 24-UI-254479 and did not address the reopen issue. On July 23, 2024, claimant filed an application for review with the Employment Appeals Board (EAB). On August 5, 2024, OAH issued a letter stating that Order No. 24-UI-257237 had been issued in error and was vacated. Also on August 5, 2024, ALJ Kangas issued Order No. 24-UI-261475, denying claimant's June 17, 2024, request to reopen the May 17, 2024, hearing as late without a showing of good cause, and leaving Order No. 24-UI-254479 undisturbed. On August 26, 2024, Order No. 24-UI-261475 became final. On September 20, 2024, claimant filed an application for review of Order No. 24-UI-261475.

**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 July 23 and September 20, 2024, applications for review and the statements enclosed therewith, 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

<sup>1</sup> Decision # L0003169481 failed to indicate when claimant's disqualification from benefits began. However, as the decision indicated that claimant separated from work on January 17, 2024, it is presumed that the Department intended to disqualify claimant from benefits effective as of the Sunday of that week, which was January 14, 2024.

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 March 19, 2024, the Department mailed decision # L0003169481 to claimant's address on file with the Department. Claimant received decision # L0003169481 and filed a timely request for hearing on April 6, 2024.

(2) On May 3, 2024, OAH served notice of a hearing on decision # L0003169481, scheduled for May 17, 2024. On May 17, 2024, claimant failed to appear for the hearing, and ALJ Contreras issued Order No. 24-UI-254479, dismissing claimant's request for hearing due to claimant's failure to appear. On June 6, 2024, Order No. 24-UI-254479 became final without claimant having filed a request to reopen the hearing. On June 17, 2024, claimant filed a late request to reopen the May 17, 2024, hearing.

(3) On June 24, 2024, OAH issued Order No. 24-UI-257237. On July 23, 2024, claimant filed an application for review with EAB.

(4) On August 5, 2024, OAH mailed a letter stating that Order No. 24-UI-257237 had been erroneously issued and vacated that order. Also on August 5, 2024, ALJ Kangas issued Order No. 24-UI-261475, denying claimant's June 17, 2024, request to reopen the May 17, 2024 hearing as late without a showing of good cause, and leaving Order No. 24-UI-254479 undisturbed. Order No. 24-UI-261475 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-261475 at 4. Order No. 24-UI-261475 also stated on its Certificate of Mailing, "Any appeal from this Order must be filed on or before August 26, 2024, to be timely."

(5) On August 26, 2024, Order No. 24-UI-261475 became final without claimant having filed an application for review on that order. On September 20, 2024, claimant filed a late application for review of Order No. 24-UI-261475.

**CONCLUSIONS AND REASONS:** Claimant's July 23, 2024, application for review was timely filed as to Order No. 24-UI-261475. This matter is remanded for further development of the record to determine whether claimant's late request to reopen the May 17, 2024, hearing should be allowed and, if so, the merits of decision # L0003169481.

**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 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-261475 was due by August 26, 2024. Claimant filed two applications for review, the first on July 23, 2024, and the second on September 20, 2024. On August 5,

2024, OAH vacated Order No. 24-UI-257237 and issued Order No. 24-UI-261475. Order No. 24-UI-261475 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-261475 at 4. Order No. 24-UI-261475 also stated on its Certificate of Mailing, “Any appeal from this Order must be filed on or before August 26, 2024, to be timely.”

Given the confusion caused by the erroneous issuance of Order No. 24-UI-257237, OAH’s subsequent decision to vacate the order and issue Order No. 24-UI-261475, and claimant’s understanding she had “already” filed an application for review, it is reasonable to construe claimant’s July 23, 2024, filing as applicable to Order No. 24-UI-261475. EAB Exhibit 1. Therefore, claimant filed a timely application for review of Order No. 24-UI-261475, and it is unnecessary to determine whether claimant’s September 20, 2024, late application for review of Order No. 24-UI-261475 should be allowed.

**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 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).

Claimant failed to appear at the May 17, 2024, hearing, and did not file a request to reopen that hearing until after the timely filing deadline to do so had passed. Claimant submitted three separate filings in June, July, and September 2024, all of which contain information which may explain why claimant failed to appear at the hearing or why they failed to file a timely request to reopen the hearing. However, further development of the record is necessary to determine whether claimant’s late request to reopen should be allowed.

On their June 17, 2024, request to reopen, claimant stated, “May 27, 2024, I never received information about [the] hearing till the day of the hearing when i checked the mail at 3:00 p.m. I only knew about the hearing cause [I] spoke to my old boss... on the phone that morning at [about] the same time the hearing was suppose[d] to start and he stated he had cancelled the hearing and he was never trying to deny my [benefits].” Exhibit 5 at 1. On their July 23, 2024, application for review, in response to a question asking why they filed their application for review late,<sup>2</sup> claimant stated, “[I] am not staying where [I] get my mail and [I] thought [I] would be notified online not mail.” EAB Exhibit 1 at 1. Claimant also restated their belief that their prior employer had “cancelled the hearing.” EAB Exhibit 1 at 1. On their September 20, 2024, application for review, claimant stated, in relevant part, “My phone was shut off

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<sup>2</sup> Although claimant’s July 23, 2024, application for review has been applied to Order No. 24-UI-261475, as explained above, the order actually referenced on the application for review form was Order No. 24-UI-08354. EAB Exhibit 1 at 1. Had the July 23, 2024, application for review been applied to Order No. 24-UI-08354 instead, the application for review would have been late, hence the question posed on the form.

during the original hearing date.” EAB Exhibit 1 at 3. Claimant also stated that they were “pretty much homeless.” EAB Exhibit 1 at 3.

Thus, claimant has presented several potential explanations both for why they failed to appear at the May 17, 2024, hearing and why they failed to file a timely request to reopen that hearing. On remand, the ALJ should inquire as to when, if at all, claimant received the May 3, 2024 notice of hearing; what factors, if any, prevented claimant from checking their mail earlier than the date on which they eventually checked their mail and found the notice of hearing; when their former employer told them that they had “cancelled the hearing”; the dates on which claimant was homeless or otherwise did not have access to their mail; the dates on which claimant did not have access to a phone; and what caused claimant to wait until June 17, 2024 to file the late request to reopen the hearing. The ALJ should also inquire as to why claimant did not explain all of these issues on their initial June 2024 request to reopen the hearing, instead leaving some of them for later filings.

For the above reasons, Order No. 24-UI-261475 is set aside, and this matter remanded for a hearing on whether claimant’s late request to reopen the hearing should be allowed and, if so, the merits of decision # L0003169481.

**DECISION:** Order No. 24-UI-261475 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: October 8, 2024**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-261475 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 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**  
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