

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0690

Reversed
Late Requests for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On May 28, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant had failed to provide information to the Department by failing to verify their identity, and was therefore ineligible for unemployment insurance benefits effective May 19, 2024 (decision # L0004236029).¹ Also on May 28, 2024, the Department served notice of an administrative decision concluding that claimant had failed to register for work in accordance with the Department's rules, and was therefore ineligible for benefits effective May 5, 2024 (decision # L0004204743). On June 17, 2024, decisions # L0004236029 and L0004204743 became final without claimant having filed requests for hearing. On August 7, 2024, claimant filed late requests for hearing on decisions # L0004236029 and L0004204743.

ALJ Scott considered claimant's requests, and on September 6, 2024, issued Orders No. 24-UI-265223 and 24-UI-265219, dismissing claimant's requests for hearing on decisions # L0004236029 and L0004204743, respectively, as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by September 20, 2024. On September 26, 2024, claimant filed a late response to the appellant questionnaire and timely applications for review of Orders No. 24-UI-265223 and 24-UI-265219 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 24-UI-265223 and 24-UI-265219. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2024-EAB-0690 and 2024-EAB-0691).

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 response to the

¹ Decision # L0004236029 stated that claimant was denied benefits effective May 24, 2024. However, this appears to be error, as denials from benefits must begin on the first day of the week in which they are effective. Therefore, it is presumed that the Department intended to deny claimant benefits effective May 19, 2024.

appellant questionnaire and attached materials, 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.

WRITTEN ARGUMENT: EAB considered claimant’s written argument when reaching this decision.²

FINDINGS OF FACT: (1) On May 28, 2024, the Department mailed decision # L0004236029 to claimant’s address on file with the Department. Decision # L0004236029 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 **June 17, 2024.**” Order No. 24-UI-265223, Exhibit 1 at 2 (emphasis in original).

(2) On May 28, 2024, the Department mailed decision # L0004204743 to claimant’s address on file with the Department. Decision # L0004204743 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 **June 17, 2024.**” Order No. 24-UI-265219, Exhibit 1 at 2 (emphasis in original).

(3) Claimant received decisions # L0004236029 and L0004204743 in late May or early June 2024 and “immediately... file[d] an appeal request online through Frances.oregon.gov by the deadline of June 17th.” EAB Exhibit 1 at 1. Claimant did not receive a response to this request. On June 24, 2024, claimant sent a message to the Department via Frances requesting an “update on the status of the appeal request,” but received no response. EAB Exhibit 1 at 1. On August 6, 2024, claimant spoke to a Department representative who told claimant that because claimant had not yet completed their ID verification process, the system would not “accept [their] appeals request.” EAB Exhibit 1 at 1. The representative “reset [claimant’s] account” so that claimant was able to file a request for hearing via Frances. EAB Exhibit 1 at 1. On August 7, 2024, claimant filed late requests for hearing on decisions # L0004236029 and L0004204743.

CONCLUSIONS AND REASONS: Orders No. 24-UI-265223 and 24-UI-265219 are reversed and these matters remanded for a hearing on the merits of decisions # L0004236029 and L0004204743.

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 requests for hearing on decisions # L0004236029 and L0004204743 were due by June 17, 2024. Because claimant did not file their requests for hearing until August 7, 2024, the requests were late. However, the record shows that claimant had good cause for filing their late requests for hearing.

² Claimant’s written argument, filed on October 4, 2024, was a duplicate of claimant’s response to the appellant questionnaire and attached materials.

Claimant stated in their appellant questionnaire response that they attempted to file their requests for hearing prior to June 17, 2024, via Frances Online, that they received no correspondence in response to these attempted requests, and that they did not learn that they were prevented from being able to file requests for hearing through their Frances account until they spoke to a Department representative on August 6, 2024. EAB Exhibit 1 at 1. There is no indication in the record that claimant knew, or had reason to know, that the system would prevent them from successfully filing requests for hearing due to not having completed their identity verification process. Therefore, claimant was prevented from filing timely requests for hearing due to factors beyond their reasonable control.

Those factors ceased on August 6, 2024, when the representative to whom claimant spoke “reset” claimant’s account so that claimant could successfully file their requests. Claimant did so the following day. As such, claimant filed their late requests for hearing within the seven-day “reasonable time” period required under OAR 471-040-0010.

For the above reasons, claimant had good cause for failing to file timely requests for hearing, and filed their late requests for hearing within a reasonable time. Claimant’s late requests for hearing on decisions # L0004236029 and L0004204743 therefore are allowed, and claimant is entitled to a hearing on the merits of those decisions.

DECISION: Orders No. 24-UI-265223 and 24-UI-265219 are set aside, and these matters remanded for further proceedings consistent with this order.

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

DATE of Service: October 10, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 24-UI-265223 and 24-UI-265219 or return these matters to EAB. Only timely applications for review of the subsequent order will cause these matters 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
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
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