

**EMPLOYMENT APPEALS BOARD DECISION**  
**2024-EAB-0713**

*Reversed & Remanded*

**PROCEDURAL HISTORY AND FINDINGS OF FACT:** On September 3, 2021, 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 was ineligible for benefits for the week of August 8, 2021, through August 14, 2021 (week 32-21) and until the reason for the denial ended. On September 23, 2021, the September 3, 2021, administrative decision became final without claimant having filed a request for hearing. On August 19, 2024, claimant filed a late request for hearing on the September 3, 2021, administrative decision. ALJ Scott considered claimant's request, and on September 6, 2024, issued Order No. 24-UI-265136, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by September 20, 2024. On September 24, 2024, claimant filed a late response to the appellant questionnaire.

ALJ Scott reviewed claimant's response. On September 30, 2024, ALJ Scott issued Order No. 24-UI-267808, concluding that the questionnaire response would not be considered because it was filed late, canceling Order No. 24-UI-265136, re-dismissing claimant's late request for hearing, and leaving the September 3, 2021, administrative decision undisturbed. On October 7, 2024, claimant filed an application for review of Order No. 24-UI-267808.

**EVIDENTIARY MATTER:** Claimant's appellant questionnaire response was not filed by the September 20, 2024, deadline set forth in Order No. 24-UI-265136 (within 14 days of the order's September 6, 2024, mailing date). The questionnaire response was marked for identification as Exhibit 3 but was not considered as evidence by the ALJ in deciding Order No. 24-UI-267808. However, although the questionnaire response was not filed within the 14-day timeframe imposed by Order No. 24-UI-265136, it was filed within the 20-day timeframe to timely file an application for review of that order. Because it was probable that claimant confused the two timeframes, and doing so was reasonable, claimant showed that factors or circumstances beyond their reasonable control prevented them from filing the appellant questionnaire response by the September 20, 2024, deadline. Accordingly, under OAR 471-041-0090(1) (May 13, 2019), EAB considered the appellant questionnaire response when reaching this decision.

**CONCLUSIONS AND REASONS:** Order No. 24-UI-267808 is set aside, and this matter remanded for a hearing on whether claimant’s late request for hearing on the September 3, 2021, administrative decision should be allowed, and, if so, the merits of that decision.

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 September 3, 2021, administrative decision was September 23, 2021. Because claimant did not request a hearing until August 19, 2024, the request for hearing was late.

In claimant’s answer to the first question posed by the appellant questionnaire, “On what date (mm/dd/yy) did you receive the administrative decision,” claimant indicated that they received the September 3, 2021, administrative decision on August 19, 2024. Exhibit 3 at 1. However, it is not clear whether claimant meant in this answer to reference the September 3, 2021, administrative decision or a later failure to register decision, dated August 19, 2024. This is unclear because claimant attached to their hearing request a screenshot from Frances Online showing that they were sent a “Did Not Complete Registration Requirements” letter on August 19, 2024. Exhibit 2 at 5. This raises the possibility that it was the separate failure to register administrative decision that claimant meant to convey was received on August 19, 2024. Department records show that claimant requested hearings on that failure to register administrative decision and as well as on a failure to provide information administrative decision at the same time as they appealed the administrative decision in this matter, and that the requests for hearing of the former two decisions are currently pending before the Office of Administrative Hearings (OAH).<sup>1</sup>

The remainder of claimant’s questionnaire response alludes to an overpayment of benefits claimant appears to believe they received while claiming benefits during the COVID-19 pandemic, and asserts that if claimant had been notified of this overpayment, they would have met the deadline to timely appeal the September 3, 2021, administrative decision. Exhibit 1 at 1, 4. However, it is not evident that the September 3, 2021, administrative decision resulted in claimant becoming liable for an overpayment. Department records suggest that the failure to register issue reflected in the September 3, 2021, administrative decision caused claimant to be deemed ineligible to receive benefits for four weeks claimant claimed in August and early September 2021, but that the Department did not pay claimant for those weeks.<sup>2</sup> Since claimant was not paid, claimant’s status of being ineligible to receive benefits as to

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<sup>1</sup> EAB has taken notice of this fact, which is 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.

<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

those four weeks would not have resulted in an overpayment. Otherwise, as to the separate failure to register administrative decision and the failure to provide information administrative decision that are currently pending before OAH, Department records give conflicting information. Weekly claim information suggests the Department considers benefits paid to claimant for the weeks of July 21 through August 10, 2024 (weeks 30-24 through 32-24) to be overpaid, yet a note from a Department representative states, “The overpayment in claim Regular Unemployment Compensation Benefits . . . is invalid. Added to . . . spreadsheet for stimulus cancellation adjustment.”<sup>3</sup>

In any case, given the significant possibility that claimant did not receive the September 3, 2021, administrative decision and only became aware of it on August 19, 2024, the same day claimant filed their late request for hearing, claimant’s circumstances may have constituted factors beyond their reasonable control or an excusable mistake that would constitute good cause for the late appeal. However, further development of the record is necessary to determine whether claimant had good cause for the late request for hearing and, if so, whether claimant filed within a reasonable time of when the factors preventing a timely filing ceased to exist.

On remand, the ALJ should inquire precisely when claimant became aware of the September 3, 2021, administrative decision and their right to appeal it. The ALJ should inquire whether claimant failed to receive the September 3, 2021, administrative decision, and, if claimant did not receive it, why that was the case, such as whether claimant had trouble with delivery of mail in the September 2021 timeframe. If claimant did receive the administrative decision, the ALJ should ask when that occurred. The ALJ should also ask questions to determine whether the date claimant became aware of the September 3, 2021, administrative decision and their right to appeal it occurred within a seven day “reasonable time” of the August 19, 2024 late request for hearing filing date.

OAH may wish to consolidate this case with the failure to register administrative decision and the failure to provide information administrative decision that are currently pending before it. In addition, given the current high call volume and likelihood that claimant has not been able to gain clarity on the issue by directly contacting the Department, if a Department representative appears on remand to testify on behalf of the Department, the ALJ may choose to allow claimant to seek a clarification from the representative as to whether there is currently an overpayment pending against claimant.

If the record on remand shows that claimant had good cause to file their request for hearing late, and if claimant’s late request for hearing was made within a seven-day reasonable time, the late request for hearing should be allowed and the ALJ should turn to the merits of the administrative decision. Order No. 24-UI-267808 therefore is reversed, and this matter remanded for a hearing on whether claimant’s late request for hearing should be allowed and, if so, the merits of the September 3, 2021, administrative decision.

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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 facts 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 facts will remain in the record.

**DECISION:** Order No. 24-UI-267808 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: October 25, 2024**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-267808 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.

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