

**EMPLOYMENT APPEALS BOARD DECISION**  
**2024-EAB-0729**

*Affirmed*  
*Late Request for Hearing Dismissed*

**PROCEDURAL HISTORY:** On June 24, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work from May 19 through June 15, 2024 (weeks 21-24 through 24-24) and was ineligible for benefits for those weeks and until the reason for the denial ended, and that claimant received \$1,818 in benefits to which they were not entitled and must repay (decision # L0004880019).<sup>1</sup> On July 15, 2024, decision # L0004880019 became final without claimant having filed a request for hearing.

On August 14, 2024, claimant filed a late request for hearing on decision # L0004880019. ALJ Kangas considered the request, and on August 30, 2024, issued Order No. 24-UI-264388, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by September 13, 2024. On September 11, 2024, claimant filed a timely appellant questionnaire response. ALJ Scott considered the response, and on September 30, 2024, issued Order No. 24-UI-267840, re-dismissing claimant's request for hearing as late without good cause and leaving decision # L0004880019 undisturbed. On October 9, 2024, claimant filed an application for review of Order No. 24-UI-267840 with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant's argument contained information that was not part of the record while the matter was pending at the Office of Administrative Hearings (OAH), and did not show that factors or circumstances beyond claimant's reasonable control prevented them from offering the information at that time. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at OAH when reaching this decision. EAB considered claimant's argument to the extent it was based on the record.

<sup>1</sup> Decision # L0004880019 stated that the period of ineligibility was from May 12, 2024 through December 21, 2024. However, this appears to be in error because the issue of availability for work is determined as to each week claimed, and therefore cannot end on a definite future date. Additionally, the decision stated that claimant had only claimed benefits for weeks 21-24 through 24-24.

**FINDINGS OF FACT:** (1) On June 24, 2024, decision # L0004880019 was mailed to claimant’s address of record on file with the Department. Decision # L0004880019 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 **July 15, 2024.**” Exhibit 1 at 2 (emphasis in original). Claimant received decision # L0004880019 on June 28, 2024.

(2) Around the time claimant received decision # L0004880019 they were “very busy [in the] process of moving to Alaska.” Exhibit 3 at 2. Claimant called the Department to inquire about the decision on one or more occasions between June 25, 2024, and August 14, 2024. During one such call on August 14, 2024, the Department representative advised claimant to file a late request for hearing.

(3) On August 14, 2024, claimant filed a late request for hearing.

**CONCLUSIONS AND REASONS:** Claimant’s late request for hearing is dismissed.

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 # L0004880019 was due by July 15, 2024. Because claimant’s request for hearing was filed on August 14, 2024, the request was late. In their appellant questionnaire response, claimant wrote that they received decision # L0004880019 but were in the process of moving at the time. Exhibit 3 at 2-3. Claimant further wrote that on “Aug. 14<sup>th</sup>, 2024, after multiple phone calls to unemployment department asking what steps I needed to take – not one time until August was appeal mentioned [or] reminded.” Exhibit 3 at 3. However, as claimant received decision # L0004880019 on June 28, 2024, which explained the right to appeal and the deadline by which to do so, the record does not show that filing a request for hearing by July 15, 2024, was beyond claimant’s reasonable control.

Further, while it is unclear from the record whether any of claimant’s calls to the Department occurred prior to the July 15, 2024, deadline, if claimant spoke to a representative on or before the filing deadline and the representative failed to suggest appeal, this did not give rise to an “excusable mistake” within the meaning of the administrative rules because the appeal rights printed in the decision provided claimant with due process. Thus, while claimant’s failure to file by the deadline may have been the result of a mistake on claimant’s part, it was not an “excusable mistake” because it did not, for example, raise a due process issue, and was not the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply. Therefore, claimant has not shown that they were prevented from timely filing the request for hearing by circumstances beyond their reasonable control or an excusable mistake and, accordingly, good cause does not exist to extend the filing deadline.<sup>2</sup>

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<sup>2</sup> Claimant should note that had the new information included with the application for review been considered, it suggests that the circumstances that prevented claimant from timely filing the request for hearing ended no later than July 19, 2024. Therefore, even if these circumstances were found to be good cause to extend the filing deadline, the late request for hearing was not filed within a seven-day “reasonable time” thereafter, as required by rule.

For these reasons, claimant's late request for hearing is dismissed. Decision # L0004880019 remains undisturbed.

**DECISION:** Order No. 24-UI-267840 is affirmed.

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

**DATE of Service:** October 25, 2024

**NOTE:** You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at [courts.oregon.gov](https://courts.oregon.gov). Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

**NOTE:** **The Department may defer recovery or completely waive the overpaid amount if certain standards are met.** If you apply but do not qualify for a waiver, other relief may be available, such as temporarily pausing collection efforts or limiting reductions of current benefits. It is important to apply for a waiver as soon as possible because waivers are not retroactive. **For more information on requesting a waiver, go to <https://unemployment.oregon.gov/overpayments> or call 503-947-1995.**

The Overpayment Waiver Application is available for download at <https://unemployment.oregon.gov/uploads/docs/FORM129-EN.pdf> and can be submitted in any of these ways:

- **Frances Online:** Log in to your Frances Online account and use "Send a Message"
- **Use the Contact Us form online at:** [unemployment.oregon.gov/contact](https://unemployment.oregon.gov/contact)
- **Email:** [UIOverpayments@employ.oregon.gov](mailto:UIOverpayments@employ.oregon.gov) – Subject: "Waiver Request"
- **Fax:** 503-947-1811 – ATTN: BPC Waiver Requests
- **U.S. Mail:** BPC Overpayment Waivers, PO Box 14130, Salem, OR 97311

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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**  
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711  
[www.Oregon.gov/Employ/eab](http://www.Oregon.gov/Employ/eab)

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