

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0752-R

*EAB Decision 2024-EAB-0752 Adhered to on Reconsideration
Late Request for Hearing Dismissed*

PROCEDURAL HISTORY AND FINDINGS OF FACT: On June 18, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and therefore was disqualified from receiving unemployment insurance benefits effective May 5, 2024 (decision # L0004547485).¹ On July 8, 2024, decision # L0004547485 became final without claimant having filed a request for hearing. On July 26, 2024, claimant filed a late request for hearing on decision # L0004547485. ALJ Scott considered claimant's request, and on September 10, 2024, issued Order No. 24-UI-265464, 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 24, 2024. On September 12, 2024, claimant filed a timely response to the appellant questionnaire. On October 1, 2024, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 24-UI-265464 was vacated and that a hearing would be scheduled to determine whether claimant had good cause to file the late request for hearing and, if so, the merits of decision # L0004547485.

On October 22, 2024, ALJ Christon conducted a hearing at which the Department failed to appear, and issued Order No. 24-UI-270328, re-dismissing claimant's late request for hearing on decision # L0004547485 and leaving that decision undisturbed. On October 25, 2024, claimant filed an application for review of Order No. 24-UI-270328 with the Employment Appeals Board (EAB). On November 8, 2024, EAB issued EAB Decision 2024-EAB-0752, affirming Order No. 24-UI-270328. On November 14, 2024, after EAB issued EAB Decision 2024-EAB-0752, EAB received from claimant a timely-filed

¹ Decision # L0004547485 stated that claimant was denied benefits from May 5, 2024, to April 19, 2025. However, the end date of the disqualification appears to be error because disqualifications from benefits under ORS 657.176 continue until the individual has earned, subsequent to the week in which the disqualification began, four times their weekly benefit amount in subject employment. *See* ORS 657.176(2). As such, it is presumed that the Department intended to disqualify claimant from benefits beginning May 5, 2024, and until he earned four times his weekly benefit amount in subject employment.

written argument. On its own motion, EAB reopened EAB Decision 2024-EAB-0752 for reconsideration. This decision is issued pursuant to EAB's authority under ORS 657.290(3).

CONCLUSIONS AND REASONS: EAB Decision 2024-EAB-0752 is adhered to on reconsideration. Order No. 24-UI-UI-270328 is affirmed, and decision # L0004547485 remains undisturbed.

ORS 657.290(3) authorizes EAB to reconsider any previous decision of the Employment Appeals Board, including "the making of a new decision to the extent necessary and appropriate for the correction of previous error of fact or law." "Any party may request reconsideration to correct an error of material fact or law, or to explain any unexplained inconsistency with Employment Department rule, or officially stated Employment Department position, or prior Employment Department practice." OAR 471-041-0145(1) (May 13, 2019).

Claimant filed a timely written argument on November 14, 2024. EAB's decision to issue EAB Decision 2024-EAB-0752 before the written argument due date was error, and EAB has therefore reopened EAB Decision 2024-EAB-0752 for reconsideration on its own motion.

Claimant's November 14, 2024, written argument consists of three documents: a brief one-page handwritten statement on a Request for Hearing form which does not appear elsewhere in the record; a longer two-page handwritten statement on an Application for Review form, which claimant had already submitted as a written argument on October 25, 2024; and claimant's September 12, 2024, response to the appellant questionnaire.

As a preliminary matter, EAB cannot consider claimant's November 14, 2024, written argument because he did not declare that he provided a copy of his argument to the opposing party as required by OAR 471-041-0080(2)(a) (May 13, 2019). Even if claimant had served the November 14, 2024, argument on the employer, however, the argument does not alter the outcome of EAB Decision 2024-EAB-0752. Of the five pages included in the argument, the only document that was not already in the record and before EAB at the time that it issued EAB Decision 2024-EAB-0752 is the one-page handwritten statement on the Request for Hearing form. Claimant's statement on this form contained no information regarding the reason why he filed the late request for hearing, and therefore, under OAR 471-041-0090(1)(b)(A) (May 13, 2019) is not relevant and material to EAB's determination of whether claimant's late request for hearing should be allowed.

The other two documents do not show on reconsideration that there is need to correct an error of material fact or law, or to explain any unexplained inconsistency with Employment Department rule, or officially stated Employment Department position, or prior Employment Department practice, regarding the determination of whether claimant's late request for hearing should be allowed. Claimant's response to the appellant questionnaire is already in the record, and EAB considered it when issuing EAB Decision 2024-EAB-0752. As to the document previously submitted as claimant's written argument on October 25, 2024, EAB did not consider that argument or the information contained therein when issuing EAB Decision 2024-EAB-0752 both because claimant did not declare that he provided a copy of his argument to the opposing party, and because the new information it contained was not relevant and material to EAB's determination of whether claimant's late request for hearing should be allowed. *See* EAB Decision 2024-EAB-0752 at 2.

For the above reasons, claimant’s November 14, 2024, written argument cannot be considered in the determination of whether claimant’s late request for hearing should be allowed; and, even if considered, would not alter the determination originally made in EAB Decision 2024-EAB-0752.

DECISION: EAB Decision 2024-EAB-0752 is adhered to on reconsideration. Order No. 24-UI-UI-270328 is affirmed, and decision # L0004547485 remains undisturbed.

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

DATE of Service: December 20, 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 stated above**. *See* ORS 657.282. For forms and information, visit <https://www.courts.oregon.gov/courts/appellate/forms/Pages/appeal.aspx> and choose the appropriate form under “File a Petition for Judicial Review.” You may also contact the Court of Appeals by telephone at (503) 986-5555, by fax at (503) 986-5560, or by mail at 1163 State Street, Salem, Oregon 97301.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.



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

ទោរទៅ – តម្រូវការនេះមិនមែនជាភារកិច្ចរបស់អ្នកទេ បើសិនជាអ្នកមិនបានបំពេញភារកិច្ចនោះទេ។ បើសិនជាអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រេចនេះទេ លោកអ្នកអាចដាក់ពាក្យប្តឹងសុំឲ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

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
 Email: appealsboard@employ.oregon.gov
 Website: www.Oregon.gov/employ/pages/employment-appeals-board.aspx

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.