

**EMPLOYMENT APPEALS BOARD DECISION**  
**2024-EAB-0803**

*Reversed*  
*Request to Reopen Allowed*  
*Merits Hearing Required*

**PROCEDURAL HISTORY:** On June 7, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving benefits effective May 12, 2024 (decision # L0004500260).<sup>1</sup> Claimant filed a timely request for hearing. On July 8, 2024, notice was mailed to the parties that a hearing had been scheduled for July 24, 2024. Claimant failed to appear for the hearing, and on July 24, 2024 ALJ Frank issued Order No. 24-UI-260211, dismissing claimant's request for hearing due to his failure to appear. On August 1, 2024, claimant filed a timely request to reopen the hearing. On October 29, 2024, ALJ Frank conducted a hearing, and on November 6, 2024 issued Order No. 24-UI-272328, denying claimant's request to reopen and leaving Order No. 24-UI-260211 undisturbed. On November 13, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** EAB did not consider claimant's written argument when reaching this decision because he did not include a statement declaring that he provided a copy of his argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019).

**FINDINGS OF FACT:** (1) On July 8, 2024, the Department mailed notice to claimant's address of record that a telephone hearing had been scheduled for July 24, 2024 at 10:45 a.m. Claimant received the notice prior to the hearing.

(2) In July 2024, claimant had a mobile phone but did not subscribe to cellular phone service. Instead, he relied on his home Wi-Fi connection to place and receive calls using the phone. Claimant experienced

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<sup>1</sup> Decision # L0005400260 stated that claimant was denied benefits from May 12, 2024 to December 21, 2024. However, decision # L0004500260 should have stated that claimant was disqualified from receiving benefits beginning Sunday, May 12, 2024 and until he earned four times his weekly benefit amount. See ORS 657.176.

occasional, unpredictable outages of his home internet service or Wi-Fi connection, but such outages had never coincided with claimant attempting to place a phone call.

(3) On July 24, 2024, at approximately 10:45 a.m., claimant attempted to call and participate in the hearing, but the call would not connect due to a temporary problem with his home internet connection or Wi-Fi. After repeated attempts to call into the hearing were unsuccessful, claimant contacted his previous phone carrier and paid to access their cellular network. At approximately 10:59 a.m., claimant called into the hearing using the cellular network, but the hearing had already concluded.

(4) On July 25, 2024, claimant spoke with an Office of Administrative Hearings (OAH) representative and told her that his attempts to call failed due to the “connection.” Audio Record at 17:30. The representative noted in their record of the call that claimant told them that he “had tried to connect but had not succeeded for reasons unknown to him.” Order No. 24-UI-272328 at 2.<sup>2</sup>

**CONCLUSIONS AND REASONS:** Claimant’s request to reopen is allowed and a hearing on the merits of decision # L0004500260 is required.

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. “Good cause” exists when the requesting party’s failure to appear at the hearing arose from an excusable mistake or from factors beyond the party’s reasonable control. OAR 471-040-0040(2) (February 10, 2012). The party requesting reopening shall set forth the reason(s) for missing the hearing in a written statement, which the Office of Administrative Hearings (OAH) shall consider in determining whether good cause exists for failing to appear at the hearing. OAR 471-040-0040(3). For telephone hearings, good cause includes “unanticipated, and not reasonably foreseeable, loss of telephone service.” OAR 471-040-0040(2)(a)(B).

Claimant’s request to reopen was filed within 20 days of the date Order No. 24-UI-260211 was mailed, and contained an explanation for missing the hearing. The request therefore met the threshold requirements for consideration.

Claimant failed to appear because he was unable to use his mobile phone to call into the hearing. The record suggests that the call would not connect because claimant experienced an unexpected outage of his home internet or Wi-Fi service at the scheduled hearing time, and his phone required such service to place or receive calls. An OAH representative with whom claimant spoke the following day noted that claimant stated he did not know why his attempts to call failed. However, claimant rebutted this account, testifying, “I told her what the problem was—it was the connection.” Audio Record at 17:30. To the extent these accounts differed, claimant’s first-hand account is entitled to greater weight than the representative’s hearsay account, and the facts have been found accordingly. Claimant’s statement to the representative was therefore consistent with his testimony at hearing regarding the reason he missed the hearing.

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<sup>2</sup> Order No. 24-UI-272328 took official notice of the representative’s notes of this conversation and summarized them in the findings of fact, though the notes were not admitted as an exhibit.

The order under review concluded that claimant’s “purported plan to participate in a telephone hearing without paid telephone service supporting a dialable number” did not give rise to good cause for missing the hearing when the call could not be completed as planned. Order No. 24-UI-272328 at 3. The record does not support this conclusion.

Claimant testified that prior to the hearing he had successfully and reliably placed telephone calls using his mobile phone and home Wi-Fi connection without cellular network service, explaining, “It never went out on a call. . . before for me.” Audio Record at 19:27. Claimant admitted that his home Wi-Fi “goes out periodically” for reasons that are unknown to him. Audio Record at 19:00. However, given his testimony that such outages had never before impacted his ability to make or receive calls, the distinction between using Wi-Fi or a cellular network for mobile phone calls is immaterial for purposes of applying OAR 471-040-0040(2)(a)(B). Because the Wi-Fi service interruption at the time of the hearing resulted in the loss of claimant’s telephone service and was, more likely than not, unanticipated and not reasonably foreseeable, good cause exists under the rule to reopen the July 24, 2024 hearing.

For these reasons, claimant’s request to reopen is allowed and this matter remanded for a hearing on the merits of decision # L0004500260.

**DECISION:** Order No. 24-UI-272328 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: December 11, 2024**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-272328 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 desisyong ito.

## 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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