

EO: Intrastate
BYE: 28-Sep-2024

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

014
AAA 005.00
MC 000.00
MC 000.00

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0814

Late Application for Review of Order No. 24-UI-268024 Allowed
Order No. 24-UI-268024 Reversed
Late Request for Hearing on Decision # L0003791166 Allowed
Ineligible Week 15-24; Eligible Weeks 30-24, 31-24, 39-24

Late Application for Review of Order No. 24-UI-271443 Dismissed

PROCEDURAL HISTORY: On April 23, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was unable to work and ineligible for benefits from April 7 through September 28, 2024 (decision # L0003791166). On May 13, 2024, decision # L0003791166 became final without claimant having filed a request for hearing. On May 20, 2024, the Department served notice of another administrative decision concluding that claimant was unable to work and ineligible for benefits from April 7 through September 28, 2024 (decision # L0004141505).¹ On June 10, 2024, decision # L0004141505 became final without claimant having filed a request for hearing.

On July 30, 2024, claimant filed late requests for hearing on decisions # L0003791166 and L0004141505. ALJ Kangas considered the requests, and on August 1, 2024, issued Orders No. 24-UI-261177 and 24-UI-261174, dismissing the requests as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by August 15, 2024. On August 10, 2024, claimant filed a timely response to the appellant questionnaire. On September 9, 2024, and October 7, 2024, the Office of Administrative hearings (OAH) mailed letters stating that Orders No. 24-UI-261177 and 24-UI-261174 were vacated and that hearings would be scheduled to determine whether to allow claimant's late requests for hearing on decisions # L0003791166 and L0004141505 and, if so, the merits of the decisions.

¹ As ability to work must be assessed as to each week individually after benefits for that week have been claimed, both administrative decisions should have stated that the period of ineligibility began on April 7, 2024 and lasted until the reason for the denial ended. *See* ORS 657.155(1)(c); ORS 657.267(1). However, the stated period of ineligibility in the decisions is relevant to the issues now under appeal.

On October 1, 2024, ALJ Goodrich conducted a hearing on decision # L0003791166, and on October 2, 2024, issued Order No. 24-UI-268024, re-dismissing claimant's request for hearing as late without good cause and leaving decision # L0003791166 undisturbed. On October 22, 2024, Order No. 24-UI-268024 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). Also on October 22, 2024, ALJ Frank conducted a hearing on decision # L0004141505, and on October 30, 2024 issued Order No. 24-UI-271443, allowing claimant's late request for hearing and modifying decision # L0004141505 by concluding that claimant was unable to work and ineligible for benefits from April 7 through July 6, 2024 (weeks 15-24 through 27-24), but able to work and eligible for benefits from July 7 through September 28, 2024 (weeks 28-24 through 39-24).² On November 19, 2024, Order No. 24-UI-271443 became final without claimant having filed an application for review with EAB.

On November 25, 2024, claimant filed late applications for review of Orders No. 24-UI-268024 and 24-UI-271443 with EAB. EAB combined its review of Orders No. 24-UI-268024 and 24-UI-271443 under OAR 471-041-0095 (October 29, 2006). For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2024-EAB-0814 and 2024-EAB-0815).

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is the statement included with claimant's late applications for review, has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. Any party that objects to EAB taking notice of this information must send their objection to EAB in writing, stating why they object, within ten days of EAB mailing this decision. OAR 471-041-0090(2). Unless EAB receives and agrees with the objection, the exhibit(s) will remain in the record.

FINDINGS OF FACT: (1) On or around October 1, 2023, claimant filed an initial claim for benefits. The Department determined that the claim was monetarily valid. Claimant filed weekly claims for benefits for the weeks from April 7 through 13, 2024 (week 15-24), July 21 through August 3, 2024 (weeks 30-24 and 31-24), and September 22 through 28, 2024 (week 39-24). These are the weeks at issue. The Department did not pay claimant benefits for the weeks at issue.³

(2) On March 30, 2024, claimant fractured bones in his foot and was precluded by his doctor from doing any type of work until the week of July 7, 2024. At that time, claimant returned to work with his usual employer. For a month following July 7, 2024, claimant was restricted to lifting no more than 20 pounds but thereafter had no restrictions. Claimant reported being unable to work on his claim for week 15-24 due to this condition, but reported being able to work during weeks 30-24, 31-24, and 39-24 on the claims for those weeks.

² Order No. 24-UI-271443 stated that claimant's inability to work ended "no later than July 6, 2024." Order No. 24-UI-271443 at 4. It can therefore reasonably be inferred that for the remainder of the ineligibility period alleged in decision # L0004141505, weeks 28-24 through 39-24, the order concluded that claimant was able to work and eligible for benefits.

³ EAB has taken notice of these facts which are contained in Employment Department records. OAR 471-041-0090(1). Any party that objects to EAB 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.

(3) On April 23, 2024, the Department mailed decision # L0003791166 to claimant's address of record, concluding that claimant was ineligible for benefits due to being unable to work, effective April 7, 2024. Decision # L0003791166 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 **May 13, 2024.**" Order No. 24-UI-268024 Exhibit 1 at 11 (emphasis in original). Claimant received the decision shortly after it was mailed but did not file a request for hearing by the May 13, 2024, deadline because he was not able to work and therefore did not disagree with the decision.

(4) On May 20, 2024, the Department issued decision # L0004141505, which contained conclusions identical to those in decision # L0003791166, and stated that the deadline to request a hearing was June 10, 2024. Claimant received the decision shortly after it was mailed but did not file a request for hearing by the June 10, 2024, deadline because he was not able to work and therefore did not disagree with the decision.

(5) After filing a claim for benefits for the week of July 21 through 27, 2024 (week 30-24), and representing that he had been able to work that week, the Department failed to pay benefits due to the ineligibility imposed by decisions # L0003791166 and L0004141505. The Department did not make a new determination of whether claimant was able to work that week or issue a new administrative decision on that issue.

(6) On July 30, 2024, claimant filed late requests for hearing on decisions # L0003791166 and L0004141505.

(7) On October 2, 2024, Order No. 24-UI-268024, which dismissed claimant's late request for hearing on decision # L0003791166, was mailed to claimant's address of record. Order No. 24-UI-268024 stated, "You may appeal this decision by filing the attached form Application for Review with the Employment Appeals board within 20 days of the date this decision is mailed." Order No. 24-UI-268024 at 4. Order No. 24-UI-268024 also stated on its Certificate of Mailing, "Any appeal from this Order must be filed on or before October 22, 2024, to be timely." Claimant received the order shortly after it was mailed, but did not file an application for review by the October 22, 2024, deadline because he had a pending appeal at OAH of the identical eligibility issue in decision # L0004141505.

(8) On October 30, 2024, Order No. 24-UI-271443, which allowed claimant's late request for hearing on decision # L0004141505 and modified that decision to allow benefits for some weeks, was mailed to claimant's address of record. Order No. 24-UI-271443 stated, "You may appeal this decision by filing the attached form Application for Review with the Employment Appeals board within 20 days of the date this decision is mailed." Order No. 24-UI-271443 at 4. Order No. 24-UI-271443 also stated on its Certificate of Mailing, "Any appeal from this Order must be filed on or before November 19, 2024, to be timely." Claimant received the order shortly after it was mailed, but did not file an application for review by the November 19, 2024, deadline because claimant did not disagree with the conclusions of the order.

(9) Following the issuance of Order No. 24-UI-271443, which concluded that claimant was eligible for benefits for weeks 30-24, 31-24, and 39-24 on the issue of ability to work, claimant expected the Department to pay benefits for those weeks. Claimant contacted the Department and was told the effect of the order was "being processed" but "almost a month later. . . [was] told [payment] was denied." EAB

Exhibit 1 at 1. On November 25, 2024, claimant filed late applications for review of Orders No. 24-UI-268024 and 24-UI-271443 with EAB.

CONCLUSIONS AND REASONS: Claimant’s late application for review of Order No. 24-UI-268024 is allowed. Claimant’s late request for hearing on decision # L0003791166 is allowed. Claimant was unable to work from April 7 through July 6, 2024 (weeks 15-24 through 27-24), but was able to work from July 7 through September 28, 2024 (weeks 28-24 through 39-24). Claimant’s late application for review of Order No. 24-UI-271443 is dismissed.

Late applications for review. An application for review is timely if it is filed within 20 days of the date that the Office of Administrative Hearings (OAH) mailed the order for which review is sought. ORS 657.270(6); OAR 471-041-0070(1) (May 13, 2019). The 20-day filing period may be extended a “reasonable time” upon a showing of “good cause.” ORS 657.875; OAR 471-041-0070(2). “Good cause” means that factors or circumstances beyond the applicant’s reasonable control prevented timely filing. OAR 471-041-0070(2)(a). A “reasonable time” is seven days after the circumstances that prevented the timely filing ceased to exist. OAR 471-041-0070(2)(b). A late application for review will be dismissed unless it includes a written statement describing the circumstances that prevented a timely filing. OAR 471-041-0070(3).

Order No. 24-UI-268024. The application for review of Order No. 24-UI-268024 was due by October 22, 2024. Claimant’s application for review was filed on November 25, 2024, and therefore was late.

The record shows that during that timely filing period a hearing was scheduled on decision # L0004141505, which involved the same eligibility issue as Order No. 24-UI-268024. It is reasonable to infer from this that claimant believed that proceeding with the hearing on that decision, which appeared to supersede decision # L0003791166, would be a more effective avenue of appeal than an application for review of Order No. 24-UI-268024. OAH’s decision to hold separate hearings weeks apart on administrative decisions with identical conclusions was a factor beyond claimant’s reasonable control that, under these unusual circumstances, prevented him from timely filing an application for review on Order No. 24-UI-268024. Good cause has therefore been shown to extend the deadline for timely filing.

This factor continued after the issuance of Order No. 24-UI-271443 in the other matter under appeal, as the result in that matter was favorable to claimant and understandably led him believe that he would receive benefits for weeks 30-24, 31-24, and 39-24. Claimant wrote, “The unemployment department originally said it was in compliance [with the outcome of Order No. 24-UI-271443] and was being processed yet now almost a month later, I have been told [payment] was denied.” EAB Exhibit 1 at 1. It is reasonable to infer from this statement that less than seven days prior to November 25, 2024, claimant learned that he would not be paid benefits for those three weeks because of how the Department ultimately reconciled the conflicting outcomes of the two appeals. Because claimant’s late application for review was filed on November 25, 2024, it was filed within a “reasonable time” after the factor that prevented timely filing ended. Accordingly, claimant’s late application for review of Order No. 24-UI-268024 is allowed.

Order No. 24-UI-271443. The application for review of Order No. 24-UI-271443 was due by November 19, 2024. Claimant’s application for review was filed on November 25, 2024, and therefore was late.

Claimant's statement explaining the late filing, quoted above, suggested that his reason for the late filing was the Department's unexpected decision not to pay benefits for weeks 30-24, 31-24, and 39-24 following Order No. 24-UI-271443's conclusion that claimant was eligible for benefits for those weeks. Order No. 24-UI-268024, rather than Order No. 24-UI-271443, was the cause of the Department's decision not to pay benefits for those weeks. Because the Department's decision not to pay benefits was not based on Order No. 24-UI-271443, that order did not impact claimant's decision-making process regarding whether or when to appeal that order. Therefore, claimant has not shown that the unexpected nonpayment of benefits, or any other factor beyond his reasonable control, prevented timely filing of an application for review of Order No. 24-UI-2271443. Accordingly, claimant has not shown good cause to extend the deadline for timely filing, and his late application for review of Order No. 24-UI-271443 is dismissed.

Late request for hearing on decision # L0003791166. 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 # L0003791166 was due by May 13, 2024. Claimant's request for hearing was filed on July 30, 2024, and therefore was late. The record shows that claimant agreed with that decision's conclusion that he was unable to work due to fractured bones in his foot from at least April 7, 2024, through the May 13, 2024, deadline to request a hearing. It can reasonably be inferred from this that claimant believed filing the request for hearing at that time would have afforded him no relief, and therefore declined to do so. Claimant also asserted that mental effects from treatment impacted the ability to make decisions about his claim during that period. Order No. 24-UI-271443 Audio Record at 11:08.

After claimant believed he had regained the ability to work, he filed a weekly claim for benefits for the week of July 21 through July 27, 2024 (week 30-24), asserting his ability to work. It can reasonably be inferred that claimant expected the Department to evaluate his ability to work during that week and either pay benefits or issue a new administrative decision concluding that he was ineligible to receive benefits. However, the Department failed to take either action, instead relying on decisions # L0003791166 and L0004141505 to deny payment of the weekly claim without assessing his ability to work. Taken as a whole, claimant's inability to work through the timely appeal deadline, along with the Department's failure to reevaluate his ability to work once asserted on a subsequent weekly claim, constituted a circumstance beyond claimant's reasonable control that prevented timely filing. Good cause has therefore been shown to extend the deadline for timely filing.

The record does not show precisely when claimant learned that the Department would not pay benefits for week 30-24, but it can reasonably be inferred that it occurred between July 28, 2024, the first day such a claim could be filed, and July 30, 2024, when claimant filed his late requests for hearing on decisions # L0003791166 and L0004141505. Claimant's late request for hearing on decision # L0003791166 therefore was filed within a "reasonable time" after the factors that prevented timely filing ended, and is allowed.

Ability to work. To be eligible for benefits, unemployed individuals must be able to work, available for work, and actively seek work during each week claimed. ORS 657.155(1)(c). An individual shall be considered able to work in a particular week for purposes of ORS 657.155(1)(c) only if physically and mentally capable of performing the work the individual is actually seeking during all of the week. OAR 471-030-0036(2) (March 25, 2022).

Claimant testified that he suffered fractures to bones in his foot on March 30, 2024, and was precluded from performing “any work at all” until cleared to return to work beginning the week of July 7, 2024. Order No. 24-UI-271443 Audio Record at 16:13 to 17:48. The record therefore shows that claimant was not physically capable of performing his usual work or any other work that he might have been seeking during that period. Claimant further testified that beginning the week of July 7, 2024, he returned to full-time work with his usual employer, though for the first month he was restricted to “no lifting over 20 pounds.” Order No. 24-UI-271443 Audio Record at 19:45. The record does not suggest that claimant was actually seeking work that he could not perform due to the restriction during the weeks claimed within that month period, weeks 30-24 and 31-24.⁴ Further, claimant had no restrictions on his ability to work during week 39-24. Accordingly, claimant was unable to work and ineligible for benefits from April 7 through July 6, 2024, but able to work and eligible for benefits from July 7 through September 28, 2024.

For these reasons, claimant’s late application for review of Order No. 24-UI-268024 is allowed. Claimant’s late request for hearing on decision # L0003791166 is allowed. Claimant was unable to work and ineligible for benefits for the week of April 7 through 13, 2024 (week 15-24), but was able to work and eligible for benefits for the weeks from July 21 through August 3, 2024 (weeks 30-24 and 31-24), and September 22 through 28, 2024 (week 39-24).

DECISION: Claimant’s late application for review of Order No. 24-UI-268024 is allowed. Order No. 24-UI-268024 is set aside, as outlined above. Claimant’s late application for review of Order No. 24-UI-271443 is dismissed.

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

DATE of Service: December 24, 2024

NOTE: This decision reverses the ALJ’s order denying claimant benefits. Please note that in most cases, payment of benefits owed will take about a week for the Department to complete.

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.

⁴ The record suggests that the Department excused claimant from seeking work during these weeks because he was participating in an approved apprenticeship program. See Order No. 24-UI-271443 Audio Record at 12:08.

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

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
 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.