

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0845

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On September 26, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant did not actively seek work during the week of September 15, 2024, through September 21, 2024 (week 38-24) and was therefore ineligible to receive unemployment insurance benefits for that week (decision # L0006413384). On October 16, 2024, decision # L0006413384 became final without claimant having filed a request for hearing. On November 9, 2024, claimant filed a late request for hearing. ALJ Kangas considered the request, and on November 27, 2024, issued Order No. 24-UI-275132, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by December 11, 2024. On December 13, 2024, claimant filed a timely application for review with the Employment Appeals Board (EAB).

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 application 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, saying 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 will remain in the record.

WRITTEN ARGUMENT: EAB considered claimant's January 3, 2025, argument in reaching this decision.

FINDINGS OF FACT: (1) Decision # L0006413384, mailed to claimant's address of record on September 26, 2024, 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 **October 16, 2024.**" Exhibit 1 at 1 (emphasis in original).

(2) Decision # L0006413384 concluded that claimant did not actively seek work during the week of September 15, 2024, through September 21, 2024 (week 38-24). This is the week at issue. Claimant did not file a request for hearing by the October 16, 2024, deadline.

(3) Also on September 26, 2024, the Department issued decision # L0006291734, concluding that claimant was unable to work and therefore ineligible to receive unemployment insurance benefits beginning September 15, 2024, and until the reason for the denial ended.¹

(4) During the week of October 13, 2024, through October 19, 2024 (week 42-24), claimant began searching for work. Claimant believed that they met all eligibility requirements to receive benefits for that week and weeks claimed thereafter. Claimant claimed benefits for the weeks including October 13, 2024, through November 9, 2024 (weeks 42-24 through 45-24). The Department did not pay benefits for those weeks based on the ongoing denial imposed by decision # L0006291734.²

(5) On November 9, 2024, claimant filed late requests for hearing on decisions # L0006413384 and L0006291734 because of the Department's continuing denial of benefits based on decision # L0006291734. As of the date of this EAB decision, the Office of Administrative Hearings (OAH) has not acted with regard to claimant's request on decision # L0006291734.³

CONCLUSIONS AND REASONS: Claimant's late request for hearing on decision # L0006413384 is dismissed. Order No. 24-UI-275132 is affirmed.

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 # L0006413384 was due by October 16, 2024. Claimant's request for hearing was filed on November 9, 2024, and was therefore late. Information submitted with

¹ 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 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 noticed facts will remain in the record.

² 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 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 noticed facts will remain in the record.

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 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 noticed facts will remain in the record.

claimant's application for review shows that claimant was receiving medical treatment during the week at issue, and claimant stated that they did not begin looking for work until the following month for that reason. EAB Exhibit 1 at 2, 7. This suggests that claimant agreed with the conclusion of decision # L0006413384 that they were not actively seeking work during week at issue. It can reasonably be inferred that claimant chose not to file a request for hearing on decision # L0006413384 by the October 16, 2024, deadline because claimant did not disagree with it.

Claimant further wrote that they "[b]egan looking for jobs" during the week of October 13, 2024 (week 42-24) and filed a weekly claim for benefits for that week. EAB Exhibit 1 at 2. The record suggests that beginning October 13, 2024, claimant believed they met all eligibility requirements to receive benefits, including being able to work, but the Department continued to deny them benefits for week 42-24 and thereafter based on the indefinite period of ineligibility imposed by decision # L0006291734. It can reasonably be inferred that claimant disagreed with the Department's actions in this regard, prompting claimant to file late requests for hearing on decisions # L0006413384 and L0006291734. However, only decision # L0006291734, and not decision # L0006413384, was responsible for the ongoing denial of benefits.

The Department's actions following the issuance of decision # L0006291734 were therefore not a factor beyond claimant's reasonable control that prevented timely filing of a request for hearing on decision # L0006413384. They similarly did not give rise to an "excusable mistake" that prevented timely filing of a request on decision # L0006413384, because they did not, for example, raise a due process issue with respect to decision # L0006413384, and did not involve inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply. Accordingly, good cause to extend the filing deadline for decision # L0006413384 has not been shown, and the late request for hearing is dismissed.⁴

DECISION: Order No. 24-UI-275132 is affirmed.

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

DATE of Service: January 14, 2025

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 As claimant awaits action from OAH on their late request for hearing on decision # L0006291734, claimant may continue to request from the Department that they consider evidence of whether and when claimant's alleged inability to work ended, and that they issue an amended administrative decision regarding claimant's ability to work, as supported by that evidence. The Department must consider a claimant's ability to work as to each individual week claimed and make an independent determination as to that specific week to allow or deny benefits based on their eligibility. See ORS 657.267(1).

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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.

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