

**EMPLOYMENT APPEALS BOARD DECISION**  
**2024-EAB-0847**

*Reversed & Remanded*

**PROCEDURAL HISTORY AND FINDINGS OF FACT:** On May 13, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant did not actively seek work from March 17 through March 23, 2024 (week 12-24) and was not eligible for benefits for that week (decision # L0004388951). On June 3, 2024, decision # L0004388951 became final without claimant having filed a request for hearing. On November 17, 2024, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on November 27, 2024 issued Order No. 24-UI-275101, 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 14, 2024, claimant filed a timely application for review of Order No. 24-UI-275101 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 consists of a one-page written statement enclosed with the application for review, which includes an explanation for why claimant filed a late request for hearing. This evidence has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. Any party that objects to EAB admitting EAB Exhibit 1 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 will remain in the record.

The application for review also contained a short written argument and several pages of attachments relating to claimant's work search activities. EAB considered claimant's written argument when reaching this decision. However, under ORS 657.275(2) and OAR 471-041-0090(1)(b)(A), EAB did not consider the attachments to the written argument because they were not relevant and material to EAB's determination of whether claimant's late request for hearing should be allowed.

The parties may offer new information, such as the attachments regarding claimant's work search activities, into evidence at the remand hearing. At that time, it will be determined if the new information

will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing regarding documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties in advance of the hearing at their addresses as shown on the certificate of mailing for the notice of hearing.

**CONCLUSIONS AND REASONS:** Order No. 24-UI-275101 is set aside and this matter remanded for a hearing on whether to allow claimant's late request for hearing on decision # L0004388951 and, if so, the merits of decision # L0004388951.

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. Under OAR 471-040-0010(1)(b)(A), "good cause" does not include failure to receive a document due to not notifying the Department or OAH of an updated address while the person is claiming benefits or if the person knows, or reasonably should know, of a pending appeal.

The request for hearing on decision # L0004388951 was due by June 3, 2024. Because claimant did not file their request for hearing until November 17, 2024, the request was late. In their statement enclosed with the application for review, claimant stated, "A decision to deny my weekly benefit was apparently made on May 13, but I didn't hear about that decision until the first week of August when I got a demand for repayment in the mail... I got on Frances Online and failing to find a link to file an appeal I sent an email requesting one on August 9<sup>th</sup>. No one responded to that email, so on November 11<sup>th</sup> I sent another one. I did get a response to that one describing how to navigate Frances Online and file an appeal, so I finally did that. I then heard nothing until Tuesday this week when a letter notifying me that my hearing [request] had been dismissed on Nov 27<sup>th</sup>." EAB Exhibit 1 at 1.

Department records show that Department representatives entered the following comments on claimant's claim on August 26, 2024 and November 13, 2024, respectively:

Working web notice: claimant would like to file an appeal for the week ending 03/23, per lead requested to be reassigned to T2.

WN: clmt wanted to check on the status of their appeal, however appeal was never submitted. Apologized to clmt for oversight and adv how to file an appeal via FO, also adv clmt on waiver process and provided steps on how to apply for a waiver after explaining why they were denied.<sup>1</sup>

The above suggests, first, that claimant was not aware of decision # L0004388951 until they received the repayment notice in early August 2024; next, that claimant either filed, or attempted to file, a request

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<sup>1</sup> 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 such 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 fact will remain in the record.

for hearing shortly after receiving that notice; and, finally, that in November 2024 they followed up with the Department and learned that they had still not successfully filed a request for hearing.

If claimant did not receive notice of decision # L0004388951 prior to the timely filing deadline, claimant may have failed to file a timely request for hearing due to factors beyond their reasonable control. However, further information is necessary to determine whether claimant had good cause for filing the late request for hearing and, if so, whether they filed it within a reasonable time. On remand, the ALJ should inquire as to whether claimant was experiencing issues with their mail at the time that decision # L0004388951 was issued; whether decision # L0004388951 was mailed to the right address; if not, whether claimant had notified the Department of their new address; and, if not, whether claimant was claiming benefits or aware of any other pending appeals at the time decision # L0004388951 was issued.

The ALJ should also inquire as to how, and on exactly what date, claimant first learned of the existence of decision # L0004388951. Additionally, the ALJ should develop the record to show what methods claimant used in their apparent attempts to file requests for hearing in August and November 2024, why those attempts were unsuccessful, and when claimant learned that the attempts were unsuccessful.

For the above reasons, Order No. 24-UI-275101 is set aside<sup>4</sup>, and this matter remanded for a hearing on whether to allow claimant's late request for hearing and, if so, the merits of decision # L0004388951.

**DECISION:** Order No. 24-UI-275101 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:** January 13, 2025

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-275101 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 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](mailto:appealsboard@employ.oregon.gov)  
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