

**EMPLOYMENT APPEALS BOARD DECISION**  
**2024-EAB-0851**

*Affirmed*  
*Late Request for Hearing Dismissed*

**PROCEDURAL HISTORY:** On July 11, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and was therefore disqualified from receiving unemployment insurance benefits effective June 9, 2024 (decision # L0005213895).<sup>1</sup> On July 31, 2024, decision # L0005213895 became final without claimant having filed a request for hearing. On October 14, 2024, claimant filed a late request for hearing. ALJ Kangas considered the request, and on October 17, 2024, issued Order No. 24-UI-269734, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by October 31, 2024. On October 21, 2024, claimant filed a timely response to the appellant questionnaire. ALJ Kangas considered the response, and on December 5, 2024, issued Order No. 24-UI-275693, canceling Order No. 24-UI-269734 and re-dismissing claimant's late request for hearing on decision # L0005213895. On December 15, 2024, claimant filed an application for review of Order No. 24-UI-275693 with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** EAB did not consider claimant's December 15, 2024, written argument when reaching this decision because they did not include a statement declaring that they provided a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). Under ORS 657.275(2) and OAR 471-041-0090(1)(b)(A) (May 13, 2019), EAB did not consider claimant's December 25, 2024, argument because it addressed only the merits of the work separation decision and was not relevant and material to EAB's determination of whether the late request for hearing should be allowed.

**FINDINGS OF FACT:** (1) Decision # L0005213895, mailed to claimant's address of record on July 11, 2024, stated, "You have the right to appeal our decision and request a hearing if you believe our

<sup>1</sup> Decision # L0005213895 stated that claimant was denied benefits from June 23, 2024 through June 21, 2025. However, decision # L0005213895 concluded that claimant's work separation occurred on June 14, 2024, and therefore should have stated that claimant was disqualified from receiving benefits beginning Sunday, June 9, 2024 and until they earned four times their weekly benefit amount. See ORS 657.176.

decision is wrong. We must receive your request for a hearing no later than **July 31, 2024.**” Exhibit 1 at 2 (emphasis in original).

(2) Claimant received decision # L0005213895 shortly after it was mailed. Claimant disagreed with the decision but worried they would not prevail at hearing based on the evidence known to them about the work separation. Claimant therefore did not immediately file a request for hearing.

(3) On October 14, 2024, claimant filed a late request for hearing.

**CONCLUSIONS AND REASONS:** Claimant’s late request for hearing is dismissed.

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 # L0005213895 was due by July 31, 2024. Claimant’s request for hearing was filed on October 14, 2024, and was therefore late.

Claimant wrote in their appellant questionnaire response, “I did not do an appeal on time because I don’t have any proof of what they suspect me of doing[.] It’s all ‘he said, she said.’ . . . I filed late because I have no proof of what I did except my word vs. [theirs].” Exhibit 3 at 4. Claimant further wrote about the details of the work separation and how evidence claimant anticipated would be offered by the employer at hearing conflicted with claimant’s version of events. Exhibit 3 at 4.

The record does not suggest that the circumstances cited by claimant for their failure to timely file the request for hearing changed between the time claimant received decision # L0005213895 and when claimant filed the late request for hearing. Claimant wrote, “It has been 4 months without a job and money. I worked there almost 2 years. I’ve gone to my meetings, I’ve done my claims, looked for a job [and] doing my research.” Exhibit 3 at 4. It can reasonably be inferred from this that claimant’s decision to appeal was motivated by an increasing need for benefits, and that claimant’s beliefs about the strength of the evidence regarding the work separation had not changed. Claimant’s misgivings about the evidence therefore did not prevent claimant from filing a request for hearing prior to the July 31, 2024, deadline, just as they did not prevent filing of the late request for hearing on October 14, 2024.

Further, claimant’s fear that they might not prevail at hearing did not constitute a factor beyond their reasonable control. Moreover, to the extent claimant may have mistakenly believed that they could delay filing beyond the deadline in the hopes that more favorable evidence regarding the work separation would come to light, this was not an “excusable mistake” within the meaning of the administrative rules because it did not, for example, raise a due process issue, and was not the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply. Accordingly, claimant has not shown good cause to extend the filing deadline, and the late request for hearing is dismissed.

**DECISION:** Order No. 24-UI-275693 is affirmed.

S. Serres and A. Steger-Bentz;  
D. Hettle, 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.

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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 محكمة 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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