

**EMPLOYMENT APPEALS BOARD DECISION**  
**2025-EAB-0035**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On February 23, 2024, the Oregon Employment Department (the Department) served notice of a Wage and Potential Benefit Report (WPBR) concluding that claimant's weekly benefit amount was \$402 with a maximum benefit amount of \$10,452. On March 4, 2024, the February 23, 2024, WPBR became final without claimant have filed a request for hearing. On August 13, 2024, claimant filed a late request for hearing.

ALJ Scott considered claimant's request, and on December 26, 2024, issued Order No. 24-UI-278076, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by January 9, 2025. On January 14, 2025, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 24-UI-278076 with the Employment Appeals Board (EAB). This matter comes before EAB based upon claimant's January 14, 2025, application for review of Order No. 24-UI-278076.

**EVIDENTIARY MATTER:** EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is claimant's response to the appellant questionnaire, 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.

**FINDINGS OF FACT:** (1) On February 23, 2024, the Department mailed the February 23, 2024, WPBR to claimant's address on file with the Department. The February 23, 2024, WPBR stated, "This report becomes final unless you . . . request a hearing within 10 days." Exhibit 1 at 1.

(2) Claimant suffered from numerous health conditions that made it difficult for them to access their mail. EAB Exhibit 1 at 2, 4. Claimant also did not have a computer and using the internet to communicate with the Department or file requests for hearing was challenging for claimant. EAB Exhibit 1 at 2. The best way to contact claimant was by telephone. EAB Exhibit 1 at 1. At the time claimant filed their initial claim for benefits, claimant believed that they requested that the Department call claimant for any information it might need regarding claimant's claim. EAB Exhibit 1 at 3.

(3) In February 2024, claimant was “in & out of Hospital” and may not have received the February 23, 2024, WPBR promptly after it was mailed. EAB Exhibit 1 at 2.

(4) On March 4, 2024, the February 23, 2024, WPBR became final without claimant having filed a request for hearing.

(5) As time passed, claimant found that they were “[n]ot getting payment.” EAB Exhibit 1 at 3. The February 23, 2024, WPBR was not responsible for claimant’s failure to receive benefits. This is so because the February 23, 2024, WPBR was an initial claim determination that found claimant was monetarily eligible for unemployment insurance benefits, and so did not have the effect of preventing claimant from receiving benefits.

(6) Claimant’s failure to receive benefits was likely caused by different administrative decisions issued by the Department. The Department had previously issued decision # L0003322396 on March 12, 2024. Decision # L0003322396 was an administrative decision concluding that claimant had failed to register for work in accordance with the Department’s rules and was therefore not eligible to receive benefits beginning the week of February 18, 2024, through February 24, 2024 (week 08-24), and until the reason for the denial ended. The Department had also issued decision # L0005542449 on August 7, 2024, which concluded that claimant had failed to actively seek work and therefore was ineligible to receive benefits for the week of July 28, 2024, through August 3, 2024 (week 31-24).<sup>1</sup>

(7) On August 13, 2024, claimant filed a late request for hearing on the February 23, 2024, WPBR. The Department described claimant’s method of filing the hearing request as a “Paper Request for Hearing.” Exhibit 2 at 2.

(8) Claimant also filed requests for hearing on decisions # L0003322396 and L0005542449. Although the Department designated August 16, 2024, as the date these hearing requests were filed, claimant effectuated the filings by mailing in a paper hearing request form, with attachments that included the February 23, 2024, WPBR, and the Department received the paper request for hearing form on August 13, 2024, the same date the Department determined the February 23, 2024 WPBR request for hearing had been filed.<sup>2</sup>

(9) Claimant’s request for hearing on decision # L0003322396 was late. On September 12, 2024, ALJ Scott issued Order No. 24-UI-265823, dismissing claimant’s request for hearing as late, subject to claimant’s right to renew the request by responding to an appellant questionnaire by September 26, 2024. On October 2, 2024, Order No. 24-UI-265823 became final without claimant having filed an

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<sup>1</sup> EAB has taken notice of the facts contained in this paragraph, 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.

<sup>2</sup> EAB has taken notice of the facts contained in this paragraph, 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.

appellant questionnaire response or an application for review with EAB. Claimant's request for hearing on decision # L0005542449 was timely and the matter is currently pending at OAH.<sup>3</sup>

**CONCLUSIONS AND REASONS:** Order No. 24-UI-278076 is set aside, and this matter remanded for a hearing on whether claimant's late request for hearing on the February 23, 2024, WPBR should be allowed, and if so, the merits of that claim determination.

ORS 657.266(5) provides that the Department's initial determination on a new claim for benefits becomes final unless a party files a request for hearing within 10 days after the date the determination is mailed. ORS 657.875 provides that the 10-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 deadline to file a timely request for hearing on the February 23, 2024, WPBR was March 4, 2024. Because claimant did not request a hearing on the claim determination until August 13, 2024, the request for hearing was late.

As a preliminary matter, Department records show that the failure to register for work administrative decision, decision # L0003322396, and the failure to actively seek work administrative decision, decision # L0005542449 (as to week 31-24), were the decisions that resulted in claimant "[n]ot getting payment." EAB Exhibit 1 at 3. It is evident that claimant mailed to the Department a paper hearing request form, with the February 23, 2024, WPBR included as an attachment. After receiving the form on August 13, 2024, the Department construed it as a request for hearing as to all three decisions: the February 23, 2024, WPBR, decision # L0003322396, and decision # L0005542449.

The February 23, 2024, WPBR was not responsible for claimant's failure to receive benefits because it is an initial claim determination that found claimant was monetarily eligible for unemployment insurance benefits, and entitled to a weekly benefit amount of \$402. There is therefore some question as to whether claimant disagreed with any aspect of the WPBR and intended to request a hearing on it, and as to whether claimant's appeal of the claim determination, if it reaches the merits, will have any practical effect that is beneficial to claimant. However, although the WPBR was favorable to claimant in the sense that it monetarily qualified claimant for benefits, claimant may intend to argue that the WPBR's benefit amount calculation was erroneous or the wage information incomplete and that they are entitled to a higher benefit amount. Therefore, appeal of the WPBR could have some practical effect on the rights of claimant and the matter is justiciable.

The information claimant provided shows that claimant suffered from numerous health conditions that made it difficult for them to access their mail. EAB Exhibit 1 at 2. Claimant also did not have a computer and using the internet to communicate with the Department or file requests for hearing was challenging for claimant. In February 2024, claimant spent time in the hospital and may not have received the February 23, 2024, WPBR promptly after it was mailed. Claimant's potential failure to

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<sup>3</sup> EAB has taken notice of the facts contained in this paragraph, 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.

have promptly received the February 23, 2024, WPBR due to hospitalization, limited ability to check their mail, and lack of a computer may constitute factors beyond claimant's reasonable control or an excusable mistake that prevented claimant from filing a timely request for hearing. However, remand is necessary to determine whether claimant had good cause to file their hearing request late, and whether they did so within a reasonable time.

On remand, the ALJ should inquire when claimant received the February 23, 2024, WPBR or otherwise became aware of the claim determination and their right to appeal it, and whether claimant disagreed with any aspect of the determination. The ALJ should ask questions to develop when claimant was hospitalized, and precisely how claimant's health conditions made it difficult for them to access their mail, and whether and how those conditions interfered with claimant's ability to file a request for hearing on the February 23, 2024, WPBR.

Claimant's appellant questionnaire response states, "Per [claimant] he has called numerous times and is not getting any help nor answers. He keeps getting referred to go to website. [Claimant] does not have a computer." EAB Exhibit 1 at 1. The ALJ should ask questions to develop whether claimant has access to the internet or the Department's Frances Online system through means other than a computer, such as a cell phone with internet capability. The ALJ should inquire whether methods of filing a hearing request other than via the internet, such as by fax, mail, or telephone were available to claimant. The ALJ should inquire when claimant called the Department, and what Department representatives told claimant when he asked for assistance.

If the record on remand shows that claimant had good cause to file their hearing request late, the ALJ should ask questions to determine whether the August 13, 2024, late request for hearing occurred within a seven-day "reasonable time" of when the factors that prevented a timely filing ended. If claimant's late request for hearing was made within a reasonable time, the late request for hearing should be allowed and the ALJ should turn to the merits of the case.

As noted above, claimant's request for hearing on the failure to register for work administrative decision, decision # L0003322396, was dismissed as late by Order No. 24-UI-265823. On October 2, 2024, Order No. 24-UI-265823 became final without claimant having filed an application for review with EAB. Claimant may wish to file a late application for review of Order No. 24-UI-265832 with EAB.

Further, Department records show that on August 27, 2024, the Department issued decision # L0005852962, which concluded that claimant had failed to actively seek work and therefore was ineligible to receive benefits for the week of August 4, 2024, through August 10, 2024 (week 32-24). Also on August 27, 2024, the Department issued decision # L0005911776, which concluded that claimant had failed to actively seek work and therefore was ineligible to receive benefits for the week of August 11, 2024, through August 17, 2024 (week 33-24). On September 16, 2024, the two administrative decisions became final without claimant having filed requests for hearing on them.<sup>4</sup> Claimant may wish to file late requests for hearing on decisions # L0005852962 and L0005911776.

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<sup>4</sup> EAB has taken notice of the facts contained in this paragraph, 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.

OAH should consider consolidating this case with the matter that is currently pending before OAH, claimant's timely request for hearing on decision # L0005542449, the decision that concluded that claimant had failed to actively seek work and therefore was ineligible to receive benefits for week 31-24.

**DECISION:** Order No. 24-UI-278076 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:** February 19, 2025

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-278076 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 – 本判决会影响您的失业救济金。如果您不明白本判决，请立即联系就业上诉委员会。如果您不同意此判决，您可以按照该判决结尾所写的说明，向俄勒冈州上诉法院提出司法复审申请。

## 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 دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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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.