

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0053

Reversed & Remanded

PROCEDURAL HISTORY: On September 10, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged by the employer for misconduct, disqualifying claimant from receiving benefits beginning August 4, 2024 (decision # L0006030971).¹ On September 30, 2024, decision # L0006030971 became final without claimant having filed a request for hearing. On December 18, 2024, claimant filed a late request for hearing. ALJ Kangas considered the request, and on January 2, 2025, issued Order No. 25-UI-278655, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by January 16, 2025. On January 21, 2025, claimant filed a late appellant questionnaire response and a timely application for review of Order No. 25-UI-278655 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 claimant's appellant questionnaire response, and has been marked as EAB Exhibit 1 and 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.²

FINDINGS OF FACT: (1) Decision # L0006030971, mailed to claimant's address of record on September 10, 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 **September 30,**

¹ Decision # L0006030971 stated that claimant was denied benefits from August 11, 2024 to August 9, 2025. However, decision # L0006030971 found that the work separation occurred on August 5, 2024, and therefore should have stated that claimant was disqualified from receiving benefits beginning Sunday, August 4, 2024 and until they earned four times their weekly benefit amount. *See* ORS 657.176.

² The documents submitted with the appellant questionnaire response that related only to the work separation were not considered because they were not relevant to the issue now before EAB of the timeliness of the hearing request. Claimant may submit evidence relating to the work separation for consideration at the remand hearing by following the instructions on the notice of hearing.

2024.” Exhibit 1 at 2 (emphasis in original). Claimant received decision # L0006030971 on September 15, 2024. EAB Exhibit 1 at 1.

(2) Department representatives noted sending claimant emails on October 7, 8 and 30, 2024 “RE: filing an appeal.”³

(3) On December 18, 2024, claimant filed a request for hearing on decision # L0006030971.

CONCLUSIONS AND REASONS: Order No. 25-UI-278655 is set aside and this matter remanded for a hearing to determine whether to allow claimant’s late request for hearing and, if so, the merits of decision # L0006030971.

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 a party’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 # L0006030971 was due by September 30, 2024. Because claimant filed their request for hearing on December 18, 2024, the request was late. Claimant stated in their appellant questionnaire response that they received decision # L0006030971 on September 15, 2024, and filed a request for hearing “online as told to do” on September 20, 2024. EAB Exhibit 1 at 1. If claimant attempted to file a timely request for hearing that was not received, this may constitute good cause to extend the filing deadline.

Additionally, the Department’s notes suggest that claimant sent one or more messages to the Department on or before October 7, 2024, which may have requested a hearing on decision # L0006030971. According to their notes, the Department sent three replies to claimant that month regarding the subject of appeal. This suggests that the Department may have failed to recognize a request for hearing claimant filed prior to December 18, 2024. Moreover, given claimant’s belief that they filed a request for hearing on September 20, 2024, it is possible that one of these messages constituted a timely request for hearing that was misconstrued by the Department.⁴ Therefore, additional development of the record is needed to determine whether claimant filed a timely request for hearing or their late request for hearing should be allowed.

On remand, inquiry should be made as to why claimant believes that they filed a request for hearing on September 20, 2024, and whether they have any evidence corroborating that filing, as well as what

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 our 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.

⁴ OAR 471-040-0005 (July 15, 2018) provides that if a party’s filing “specifically requests a hearing or otherwise expresses a present intent to appeal and it can be determined what issue or decision is being appealed,” it meets the requirements of a request for hearing. OAR 471-040-0005(1). A request may be filed by email or using the Department’s website. OAR 471-040-0005(3)(c) and (d).

responses claimant received from the Department in October 2024 regarding “requesting an appeal” and the date and contents of claimant’s emails prompting these responses. Further, if the evidence on remand shows that claimant’s request for hearing was filed late but good cause exists to extend the filing deadline, additional inquiry should be made into whether the late request for hearing was filed within a “reasonable time” after the factors that prevented timely filing ended.

For these reasons, Order No. 25-UI-278655 is set aside and this matter remanded for a hearing on whether claimant filed a timely request for hearing or a late request for hearing that should be allowed and, if so, the merits of decision # L0006030971.

DECISION: Order No. 25-UI-278655 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 21, 2025

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 25-UI-278655 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 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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Website: www.Oregon.gov/employ/pages/employment-appeals-board.aspx

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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.