

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0066

Late Application for Review Allowed
Order No. 24-UI-270664 Affirmed
Request to Reopen Denied

PROCEDURAL HISTORY: On August 27, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and therefore was disqualified from receiving unemployment insurance benefits effective April 14, 2024 (decision # L0005802019).¹ Claimant filed a timely request for hearing. On September 6, 2024, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for September 17, 2024. On September 17, 2024, claimant failed to appear at the hearing, and ALJ Buckley issued Order No. 24-UI-266422, dismissing claimant's request for hearing due to her failure to appear. On October 1, 2024, claimant filed a timely request to reopen the hearing.² ALJ Kangas considered claimant's request, and on October 24, 2024, issued Order No. 24-UI-270664, denying the reopen request as without good cause and leaving Order No. 24-UI-266422 undisturbed. On November 13, 2024, Order No. 24-UI-270664 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On January 28, 2025, claimant filed a late application for review of Order No. 24-UI-270664 with EAB.

EVIDENTIARY MATTER AND WRITTEN ARGUMENT: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of four pages of written statements included with claimant's late application for review, regarding the circumstances surrounding that filing, which have been marked as EAB Exhibit 1, and provided to the parties with this decision. Any party that objects to EAB taking notice of this

¹ Decision # L0005802019 stated that claimant was denied benefits from July 21, 2024 to July 19, 2025. However, because decision # L0005802019 alleged that the work separation occurred on April 14, 2024, the decision should have stated that claimant was disqualified from receiving benefits beginning Sunday, April 14, 2024 and until she earned four times her weekly benefit amount. See ORS 657.176.

² Claimant filed a timely application for review of Order No. 24-UI-266422, which was treated as a request to reopen the hearing under OAR 471-041-0060(4) (May 13, 2019).

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.

In addition to the four pages of written statements admitted as EAB Exhibit 1, above, claimant submitted eleven more pages of documents with her application for review. Those documents included a copy of Order No. 24-UI-270664, three pages of handwritten statements regarding the reason that claimant failed to appear at the hearing, two pages of electronic correspondence with the Department regarding claimant's request for hearing on decision # L0005802019, a two-page written argument primarily relating to the merits of decision # L0005802019, and a fax cover sheet apparently addressed to the employer in this matter.

The information in the above documents regarding claimant's failure to appear at the hearing and the merits of decision # L0005802019 (claimant's work separation) is not in the record that Order No. 24-UI-270664 relied upon in dismissing claimant's request to reopen the hearing. Claimant did not show that factors or circumstances beyond her reasonable control prevented her from offering the information with the reopen request as required by OAR 471-041-0090. Therefore, EAB cannot consider that information when determining whether to allow claimant's reopen request. Additionally, under ORS 657.275(2) and OAR 471-041-0090(1)(b)(A), EAB did not consider the new information regarding claimant's work separation because it was not relevant and material to EAB's determination of whether claimant's reopen request should be allowed. Under ORS 657.275(2) and OAR 471-041-0090, and with the exception of EAB Exhibit 1, above, EAB considered only information received into evidence by the order under review when reaching this decision.

FINDINGS OF FACT: (1) On August 27, 2024, the Department mailed decision # L0005802019 to claimant's address on file with the Department. Claimant received decision # L0005802019 on the date it was issued, and filed a timely request for hearing the same day.

(2) On September 6, 2024, OAH served notice of a hearing on decision # L0005802019, scheduled for September 17, 2024. On September 17, 2024, claimant failed to appear for the hearing, and ALJ Buckley issued Order No. 24-UI-266422, dismissing claimant's request for hearing due to her failure to appear. On October 1, 2024, claimant filed a timely request to reopen the hearing which did not include a statement explaining why she failed to appear at the hearing.

(3) Order No. 24-UI-270664, mailed to claimant on October 24, 2024, stated, "You may appeal this decision by filing the attached form Application for Review with the Employment Appeals Board within 20 days of the date that this decision is mailed." Order No. 24-UI-270664 at 3. Order No. 24-UI-270664 also stated on its Certificate of Mailing, "Any appeal from this Order must be filed on or before November 13, 2024 to be timely."

(4) At the time that Order No. 24-UI-270664 was issued, claimant was homeless and living at a shelter where she was unable to receive mail. While claimant was homeless, her mail was forwarded to a friend's address. Nevertheless, claimant was not able to regularly retrieve her mail from her friend's address, because the mail was "being withheld from her." EAB Exhibit 1 at 1. On November 13, 2024, Order No. 24-UI-270664 became final without claimant having filed an application for review.

(5) On December 6, 2024, claimant travelled from the Portland, Oregon area to Eugene, Oregon to assist her ex-husband, who was in poor health. Claimant did so at the request of her adult daughter, who was also the daughter of claimant's ex-husband. On December 16, 2024, claimant's ex-husband was transferred to a hospital in Portland, and his condition subsequently "became terminal." EAB Exhibit 1 at 2. From December 16, 2024 through January 15, 2025, claimant resided with her daughter while the two assisted claimant's ex-husband. During that time, claimant was "unable to gather her mail . . . due to the hectic nature of the situation." EAB Exhibit 1 at 2.

(6) On January 18, 2025, claimant returned to the shelter where she had been previously staying.

(7) On January 28, 2025, claimant filed a late application for review of Order No. 24-UI-270664.

CONCLUSIONS AND REASONS: Claimant's late application for review of Order No. 24-UI-270664 is allowed. Claimant's request to reopen the hearing is denied.

Late Application for Review. An application for review is timely if it is filed within 20 days of the date that the Office of Administrative Hearings (OAH) mailed the order for which review is sought. ORS 657.270(6); OAR 471-041-0070(1) (May 13, 2019). The 20-day filing period may be extended a "reasonable time" upon a showing of "good cause." ORS 657.875; OAR 471-041-0070(2). "Good cause" means that factors or circumstances beyond the applicant's reasonable control prevented timely filing. OAR 471-041-0070(2)(a). A "reasonable time" is seven days after the circumstances that prevented the timely filing ceased to exist. OAR 471-041-0070(2)(b). A late application for review will be dismissed unless it includes a written statement describing the circumstances that prevented a timely filing. OAR 471-041-0070(3).

The application for review of Order No. 24-UI-270664 was due by November 13, 2024. Because claimant did not file her application for review with EAB until January 28, 2025, the application for review was late. However, claimant had good cause for filing the late application for review.

At the time that Order No. 24-UI-270664 was issued, claimant was homeless and living at a shelter where she could not receive mail. At that time, claimant's mail was being forwarded to a friend's address, but claimant was not able to regularly retrieve her mail because it was being withheld from her. Based on this, it is reasonable to infer that claimant did not receive a copy of Order No. 24-UI-270664 prior to the timely filing deadline. As such, claimant was prevented from filing a timely application for review due to factors or circumstances beyond her reasonable control.

These factors or circumstances appeared to continue to prevent claimant from filing a timely application for review through at least January 16, 2025, while claimant was either out of town or otherwise occupied with assisting her terminally ill ex-husband. Additionally, on January 18, 2025, claimant returned to the shelter where she had previously been staying. It can be reasonably inferred from this fact that claimant was no longer needed to assist with her ex-husband at that point. Nevertheless, because claimant was back at the same shelter where she had been unable to receive mail, it can also be inferred that she was still unable to receive mail there when she returned. The record is silent as to why claimant did not file her application for review for another ten days. Given the various hardships that claimant endured up until this point, however, it can be further reasonably inferred that claimant waited until she was in a stable housing situation at the shelter before filing the application for review, and that

she filed it shortly after that point. Therefore, more likely than not, claimant filed the late application for review within seven days of when the factors or circumstances which prevented claimant from filing a timely application for review ended. As such, claimant had good cause for filing the late application for review, and filed it within a reasonable time. Claimant's late application for review is therefore allowed.

Reopen. ORS 657.270(5) provides that any party who failed to appear at a hearing may request to reopen the hearing, and the request will be allowed if it was filed within 20 days of the date the hearing decision was issued and shows good cause for failing to appear. "Good cause" exists when the requesting party's failure to appear at the hearing arose from an excusable mistake or from factors beyond the party's reasonable control. OAR 471-040-0040(2) (February 10, 2012). The party requesting reopening shall set forth the reason(s) for missing the hearing in a written statement, which the Office of Administrative Hearings (OAH) shall consider in determining whether good cause exists for failing to appear at the hearing. OAR 471-040-0040(3).

Claimant did not appear at the September 17, 2024, hearing, and filed a request to reopen that hearing within 20 days of when the order dismissing her request for hearing was issued. Claimant's reopen request was therefore timely. However, claimant's request to reopen merely stated, "I want to Appeal," and did not provide an explanation for why she failed to appear at the hearing. Exhibit 5 at 2. The record otherwise contains no admissible information regarding why claimant failed to appear at the hearing. Claimant therefore has not shown that she had good cause for failing to appear at the hearing, and claimant's request to reopen the hearing is denied.

DECISION: The application for review filed January 28, 2025, is allowed. Order No. 24-UI-270664 is affirmed.

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

DATE of Service: February 11, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.



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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