

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0080

Reversed
Request for Hearing Timely Filed
Merits Hearing Required

PROCEDURAL HISTORY: On August 20, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and therefore was disqualified from receiving unemployment insurance benefits effective July 14, 2024 (decision # L0005663933).¹ On September 5, 2024, claimant filed a timely request for hearing on decision # L0005663933 that the Department did not construe as a request for hearing. On September 9, 2024, decision # L0005663933 became final without the Department having construed claimant's filing as a request for hearing. On October 4, 2024, claimant filed a late request for hearing on decision # L0005663933. ALJ Kangas considered claimant's request, and on October 15, 2024, issued Order No. 24-UI-269419, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by October 29, 2024. On October 31, 2024, claimant filed a late response to the appellant questionnaire. ALJ Scott considered claimant's response, and on January 15, 2025, issued Order No. 25-UI-279913, canceling 24-UI-269419 and re-dismissing claimant's late request for hearing. On February 3, 2025, claimant filed an application for review of Order No. 25-UI-279913 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 claimant's written statement with the application for review and an attached document, which are necessary to complete the record. This evidence has been marked as EAB Exhibit 1 and has been provided to the parties with this decision. Any party that objects to EAB taking notice of this information must send their objection

¹ Decision # L0005663933 stated that claimant was denied benefits from July 21, 2024, to July 19, 2025. However, because decision # L0005663933 concluded that claimant was discharged on July 20, 2024, it should have stated that claimant was disqualified from receiving benefits beginning Sunday, July 14, 2024, and until they earned four times their weekly benefit amount. *See* ORS 657.176.

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 August 20, 2024, the Department mailed decision # L0005663933 to claimant's address on file with the Department. Decision # L0005663933 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 9, 2024.**" Exhibit 1 at 2 (emphasis in original).

(2) On or around August 21, 2024, claimant received decision # L0005663933, but had trouble determining how to appeal the decision via Frances Online.

(3) On September 5, 2024, claimant contacted the Department via Frances Online and stated, "I would please like to request a hearing to appeal the decision on my unemployment benefits." EAB Exhibit 1 at 3. On September 22, 2024, a Department representative responded to claimant's message with an explanation of how to file a request for hearing.

(4) On October 15, 2024, claimant filed a late request for hearing on decision # L0005663933.

CONCLUSIONS AND REASONS: Claimant filed a timely request for hearing on decision # L0005663933. Order No. 25-UI-279913 therefore is reversed, and this matter remanded for a hearing on the merits of decision # L0005663933.

OAR 471-040-0005(1) (July 15, 2018) states, "A Request for hearing may be filed on forms provided by the Employment Department or similar offices in other states. Use of the form is not required provided the party specifically requests a hearing or otherwise expresses a present intent to appeal and it can be determined what issue or decision is being appealed."

The request for hearing on decision # L0005663933 was due by September 9, 2024. The order under review concluded that claimant had failed to file a timely request for hearing on that decision. Order No. 25-UI-279913 at 1. The record does not support this conclusion.

The record shows that claimant contacted the Department via Frances Online on September 5, 2024, and requested a hearing, after unsuccessfully trying to determine how to request a hearing via that system. Claimant did not indicate in their message to the Department on that date which administrative decision they sought to appeal, or otherwise describe its contents. However, claimant sent the message within the timely appeal period for decision # L0005663933, and the record lacks evidence indicating that the Department had issued any other administrative decisions on claimant's claim around that time. Therefore, the Department could have reasonably determined that claimant's message was intended to be a request for hearing on decision # L0005663933. As such, claimant's message on September 5, 2024, was a timely request for hearing on decision # L0005663933 under OAR 471-040-0005(1), and claimant is entitled to a hearing on the merits of that decision.

DECISION: Order No. 25-UI-279913 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: March 5, 2025

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 25-UI-279913 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 دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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