

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0086

Application for Review Timely Filed
Reversed ~ Request to Reopen Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On November 5, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work, and was therefore ineligible to receive benefits, effective October 6, 2024, and until the reason for the denial ended (decision # L0007087428).¹ Claimant filed a timely request for hearing. On November 13, 2024, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for November 26, 2024. On November 26, 2024, claimant failed to appear at the hearing, and ALJ Contreras issued Order No. 24-UI-274858, dismissing claimant's request for hearing due to their failure to appear. On December 16, 2024, claimant filed a timely request to reopen the hearing. ALJ Kangas considered claimant's request, and on January 14, 2025, issued Order No. 25-UI-279795, denying the reopen request as without good cause and leaving Order No. 24-UI-274858 undisturbed. On February 3, 2025, Order No. 25-UI-279795 became final without the Employment Appeals Board (EAB) having received an application for review from claimant. On February 11, 2025, claimant filed a late application for review of Order No. 25-UI-279795 with 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 statement enclosed with their application for review, marked as EAB Exhibit 1, and a four-page handwritten narrative regarding the circumstances which caused claimant to fail to appear at the hearing, and a copy of a telephone log, marked as EAB Exhibit 2. These exhibits have been provided to the parties with this decision. Any party that objects to EAB considering 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 exhibits will remain in the record.

¹ Decision # L0007087428 stated that claimant was denied benefits from October 6, 2024, through October 4, 2025. However, decision # L0007087428 should have stated that claimant was denied benefits beginning Sunday, October 6, 2024, and until the reason for the denial ended. See ORS 657.176.

FINDINGS OF FACT: (1) On November 5, 2024, the Department mailed decision # L0007087428 to claimant's address on record with the Department. Claimant filed a timely request for hearing on decision # L0007087428.

(2) On November 13, 2024, OAH served notice of a hearing on decision # L0007087428, scheduled for November 26, 2024, at 10:45 a.m. The notice of hearing instructed claimant to call a specific phone number, and enter an access code, to appear at the hearing. Exhibit 3 at 1. Claimant received the notice of hearing prior to the hearing.

(3) When claimant received the notice of hearing, it was raining, so claimant "quickly opened it & read the date and time & put it away to look at better later . . . not in the rain." EAB Exhibit 2 at 2. Claimant then added the time and date of the hearing to their telephone's calendar and placed the notice in their backpack. "A few days prior" to the date of the hearing, claimant was caught in the rain, and their backpack, including the notice of hearing, got wet. EAB Exhibit 2 at 2. Claimant laid the notice of hearing out to dry.

(4) On the morning of November 26, 2024, claimant left their home, which had poor cell telephone reception, and travelled to a place with better reception. Claimant then waited to receive a telephone call to begin the hearing, mistakenly believing that the ALJ would call claimant rather than claimant calling in to the hearing line. When the telephone did not ring at the time designated for the hearing, claimant looked for the notice of hearing, but remembered that they had left the notice at home to dry. "[I]n a panic," claimant then "got online to try and figure out what to do next." EAB Exhibit 2 at 3. Between 10:54 a.m. and 10:56 a.m., claimant called OAH three times, using numbers listed on OAH's website, in an attempt to appear at the hearing. Claimant eventually reached an OAH representative and explained their mistake. The OAH representative spoke to the ALJ, and then "informed [claimant] that it was [too] late and that a decision had already been made." EAB Exhibit 2 at 3.

(5) On December 16, 2024, claimant filed a request to reopen the November 26, 2024, hearing. Claimant enclosed with their reopen request a handwritten explanation for why they did not appear at the hearing. Exhibit 5 at 3.

(6) Order No. 25-UI-279795, mailed to claimant on January 14, 2025, 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. 25-UI-279795 at 3. Order No. 25-UI-279795 also stated on its Certificate of Mailing, "Any appeal from this Order must be filed on or before February 3, 2025, to be timely."

(7) Claimant completed an application for review form and hand-dated it January 27, 2025. EAB Exhibit 1 at 2. However, when claimant mailed the application for review to EAB, the mailing was returned to claimant "almost a week later" because of insufficient postage. EAB Exhibit 1 at 1.

(8) On February 3, 2025, Order No. 25-UI-279795 became final without EAB having received an application for review from claimant. On February 11, 2025, claimant filed a late application for review of Order No. 25-UI-279795.

CONCLUSIONS AND REASONS: Claimant filed a timely application for review of Order No. 25-UI-279795. Order No. 25-UI-279795 is reversed. Claimant’s request to reopen the hearing is allowed, and claimant is entitled to a hearing on the merits of decision # L0007087428.

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).

OAR 471-041-0065 (May 13, 2019) states, in relevant part:

(1) Filing dates shall be determined as follows:

* * *

(b) If mailed, the filing date is the date that the document is deposited in the United States mail in an envelope with first class postage, as evidenced by the postmark affixed to the envelope by the United States Postal Service.

* * *

(2) Where the information specified in section (1) of this rule is missing, unclear, or improbable the filing date is the date that EAB determines to be the most probable date of filing.

The application for review of Order No. 25-UI-279795 was due by February 3, 2025. Because claimant did not file their application for review until February 11, 2025, the application for review was late. However, the record supports the conclusion that claimant also filed a timely application for review on January 27, 2025.

Claimant explained in their statement enclosed with the application for review, “I am emailing this because after I worked so hard on it and put it in the mail, it weighed more than is allowed for the stamp I put on it. I only know this because it was returned back to me almost a week later.” EAB Exhibit 1 at 1. Claimant also enclosed with that statement a copy of a completed application for review form with a handwritten date of January 27, 2025. EAB Exhibit 1 at 2.

OAR 471-041-0070 specifies that an application for review is timely if it is *filed* within 20 days of the date on which the order under review was issued, and does not require that EAB actually *receive* the application for review to be considered timely. Here, claimant filed an application for review, dated January 27, 2025, by mail, but EAB did not receive it because it was returned to claimant for insufficient postage. The information specified in OAR 471-041-0065(1)(b) is unavailable because claimant did not include a copy of the envelope in which the application for review form was originally mailed. As such,

under OAR 471-041-0065(1)(b), EAB has determined that the most probable date on which claimant mailed that form was January 27, 2025, because that is the only date indicated on or in connection with the form itself. Because claimant filed an application for review on January 27, 2025, that application for review was timely filed, and it is unnecessary to determine whether claimant's February 11, 2025, late application for review should be allowed.

Request to Reopen the Hearing. 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 filed their request to reopen the hearing within 20 days of the date on which Order No. 24-UI-274858 was issued, and also included with the request a written explanation of why they failed to appear at the hearing. Claimant's request therefore complied with the threshold requirements of OAR 471-040-0040(1)(b) and (3). Nevertheless, the order under review denied claimant's request to reopen the hearing, concluding that claimant did not have good cause to reopen the hearing under OAR 471-040-0040(2)(b)(A) because their failure to read the notice of hearing and follow its instructions was not the result of an excusable mistake or factors beyond claimant's reasonable control. Order No. 25-UI-279795 at 3. The record does not support this conclusion. Instead, the record shows that claimant failed to appear at the hearing due to an excusable mistake.

After claimant received the notice of hearing, they took several steps to prepare to appear at the hearing. Claimant entered the time and date of the hearing into their telephone's calendar, set the notice aside to dry after it was accidentally wet in the rain, and, on the day of the hearing, travelled to a location where they would have sufficient cell telephone reception for the hearing. Claimant erroneously believed that OAH would call them for the hearing and therefore did not call the hearing line as directed on the notice of hearing. Once claimant recognized that this was a mistake, and that they had forgotten to bring the notice of hearing with them, they immediately set to work finding contact information for OAH and, less than ten minutes after the hearing was scheduled to start, called OAH in an attempt to appear at the hearing.

In short, claimant failed to appear at the hearing due to a combination of forgetting the notice of hearing and believing that OAH would contact them. Claimant's efforts show an inability to follow directions despite substantial efforts to comply, which is an excusable mistake. Therefore, claimant failed to appear at the hearing due to an excusable mistake. Claimant's request to reopen the hearing is therefore allowed, and claimant is entitled to a hearing on the merits of decision # L0007087428.

DECISION: The application for review filed February 11, 2024, is allowed. Order No. 25-UI-279795 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: March 12, 2025

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 25-UI-279795 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

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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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