

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0130

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On January 17, 2024, the Oregon Employment Department (the Department) served notice of a Wage and Potential Benefit Report (WPBR) concluding that claimant had a monetarily valid claim with a weekly benefit amount of \$190 and a maximum benefit amount of \$4,068. On January 27, 2024, the January 17, 2024, WPBR became final without claimant having filed a request for hearing. On November 19, 2024, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on December 31, 2024, issued Order No. 24-UI-278433, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by January 14, 2025. On January 10, 2025, claimant filed a timely response to the appellant questionnaire. ALJ Kangas considered claimant's response to the appellant questionnaire, and on February 24, 2025, issued Order No. 25-UI-283912, re-dismissing claimant's late request for hearing as late without good cause. On February 27, 2025, claimant filed an application for review of Order No. 25-UI-283912 with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant's argument contained information that was not part of the record considered by the order under review, and did not show that factors or circumstances beyond claimant's reasonable control prevented them from offering the information with their response to the appellant questionnaire. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence while the matter was pending at the Office of Administrative Hearings (OAH). EAB considered any parts of claimant's argument that were based on the record considered by the order under review.

FINDINGS OF FACT: (1) On January 17, 2024, the Department mailed the January 17, 2024, WPBR to claimant's address on file with the Department. The January 17, 2024, WPBR stated, "This report becomes final unless you request redetermination of the report or request a hearing within 10 days." Exhibit 1 at 2.

(2) Claimant did not file a timely request for hearing on the January 17, 2024, WPBR because they were "unaware of [their] right to appeal [the] decision." Exhibit 3 at 4.

CONCLUSIONS AND REASONS: Claimant's late request for hearing is dismissed.

ORS 657.266 provides:

(1) An authorized representative shall promptly examine each new claim for benefits and, on the basis of information available, determine the total amount of wages paid to the claimant during the base year and whether or not such amount is sufficient to qualify the claimant for benefits and, if so, the weekly benefit amount payable to the claimant, the maximum amount payable with respect to such benefit year and the maximum duration thereof. * * *

* * *

(5) Unless the claimant or a base-year employer files a request for hearing on the initial or amended determination with the director, the determination shall become final and the Employment Department shall pay or deny benefits in accordance with the determination, unless otherwise provided by law. The request for hearing must be filed not later than 10 days after the delivery of the initial or amended determination unless the Employment Department mails the determination, in which case the request for hearing must be filed not later than 10 days after the date the determination is mailed to the last-known address of the claimant and the base-year employer.

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 request for hearing on the January 17, 2024, WPBR was due by January 27, 2024. Because claimant did not file their request for hearing until November 19, 2024, the request was late.

As a preliminary matter, there is some question as to whether claimant filed an earlier request for hearing that should have been construed as applicable to the January 17, 2024, WPBR. With their response to the appellant questionnaire, claimant enclosed copies of both the January 17, 2024, WPBR and an earlier WPBR that was issued on November 28, 2023. Exhibit 3 at 11–12. In their appellant questionnaire response itself, claimant stated that they filed their request for hearing in May 2024. Exhibit 3 at 4. OAH's records indicate that claimant filed a request for hearing on May 31, 2024, that the Department construed as applicable to the November 28, 2023, WPBR. It is not clear why the Department did not consider claimant's May 31, 2024, request for hearing to apply to the January 17, 2024, WPBR, which presumably superseded the November 28, 2023, WPBR and therefore would have been the more relevant decision to appeal.

Even assuming that claimant's May 31, 2024, request for hearing *did* apply to the January 17, 2024, WPBR, however, that request would still have been late. Further, regardless of whether claimant filed their late request for hearing on May 31, 2024, or November 19, 2024, claimant has not shown good cause for the late filing.

In their response to the appellant questionnaire, claimant stated, “I did not file on time because I was unaware of my right to appeal [the] decision.” Exhibit 3 at 4. Claimant further explained that they were prompted to file their request when they were “informed by one of the career [coaches] at the WorkSource center.” Exhibit 3 at 5. Claimant did not indicate that they failed to timely receive the January 17, 2024, WPBR, or that any circumstances other than their own lack of awareness of their appeal rights prevented them from filing a timely request for hearing. Therefore, claimant’s failure to file a timely request for hearing was not the result of factors beyond their reasonable control.

Further, although claimant’s lack of awareness of their right to appeal the WPBR was likely the result of a mistake on their part, it was not an “excusable mistake” within the meaning of the administrative rules because it did not, for example, raise a due process issue, and was not the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply.

Therefore, claimant’s late request for hearing on the January 17, 2024, WPBR must be dismissed under ORS 657.875 and OAR 471-040-0010.

DECISION: Order No. 25-UI-283912 is affirmed.

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

DATE of Service: March 25, 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.

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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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