

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0136

Reversed
Request for Hearing Timely Filed
Merits Hearing Required

PROCEDURAL HISTORY: On May 2, 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 effective February 18, 2024 (decision # L0003889153).¹ On May 13, 2024, claimant filed a timely request for hearing, but the department failed to construe it as such. On June 1, 2024, claimant filed a second, late, request for hearing. ALJ Kangas considered the June 1, 2024, request, and on August 14, 2024, issued Order No. 24-UI-262527, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by August 28, 2024. On November 20, 2024, claimant filed a late response to the appellant questionnaire, which the Office of Administrative Hearings (OAH) considered despite the late filing. On February 4, 2025, ALJ Micheletti conducted a hearing at which the employer failed to appear, and on February 11, 2025, issued Order No. 25-UI-282823, re-dismissing claimant's June 1, 2024, request for hearing as late without good cause, leaving decision # L0003889153 undisturbed. On March 2, 2025, claimant filed an application for review of Order No. 25-UI-282823 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) as necessary to complete the record. The additional evidence is claimant's May 13, 2024, request for hearing and the Department's message in response, 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, 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.

¹ Decision # L0003889153 stated that claimant was denied benefits from February 25, 2024 to February 22, 2025. However, as decision # L0003889153 concluded that claimant was discharged on February 23, 2024, it should have stated that claimant was disqualified from receiving benefits beginning Sunday, February 18, 2024 and until she earned four times her weekly benefit amount. See ORS 657.176.

WRITTEN ARGUMENT: Claimant did not state that she provided a copy of her March 2, 2025, argument to the employer as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained information that was not part of the hearing record and did not show that factors or circumstances beyond claimant’s reasonable control prevented her from offering the information during the hearing as required by OAR 471-041-0090. EAB therefore did not consider this argument, except for the information admitted as EAB Exhibit 1. *See* ORS 657.275(2).

Claimant’s March 24, 2025, argument contained information concerning the work separation that was not relevant and material to EAB’s determination of whether her request for hearing was timely filed, or whether her late request for hearing should be allowed. Under ORS 657.275(2) and OAR 471-041-0090(1)(b)(A), EAB considered only information that was relevant to the issue currently before EAB. EAB considered any parts of claimant’s March 24, 2025, argument that were relevant and based on the hearing record or EAB Exhibit 1.

The parties may offer new information concerning the work separation into evidence at the remand hearing. At that time, it will be determined if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing regarding documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties in advance of the hearing at their addresses as shown on the certificate of mailing for the notice of hearing.

FINDINGS OF FACT: (1) Decision # L0003889153, mailed to claimant’s address of record on file with the Department on May 2, 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 **May 22, 2024.**” Exhibit 1 at 2 (emphasis in original). Decision # L0003889153 also stated, “You may request a hearing in one of the following ways: Use Frances Online at frances.oregon.gov. . .” Exhibit 1 at 2. Claimant received decision # L0003889153 shortly after it was mailed.

(2) On May 13, 2024, claimant sent a message to the Department using Frances Online. The message stated, in relevant part, “I am writing this letter in regards to a denied benefits letter that I received on May 2nd as I would like to appeal/request a hearing for this denied benefits decision as I do not agree or think it is valid. This letter about the work separation decision stated that I willfully and wantonly chose to neglect the company I was working for.” EAB Exhibit 1 at 1.

(3) On May 29, 2024, the Department responded to claimant’s message with “instructions to appeal in Frances.” EAB Exhibit 1 at 2.

(4) On June 1, 2024, claimant filed a second request for hearing using these instructions in Frances Online.

CONCLUSIONS AND REASONS: Claimant filed a timely request for hearing, and a hearing on the merits of decision # L0003889153 is required.

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 an applicant’s reasonable control or an excusable mistake, and defines “reasonable time” as seven days after those factors ceased to exist.

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. 471-040-0005(1) (July 15, 2018). A request for hearing on an administrative decision related to the payment or amount of unemployment insurance benefits may be filed by mail, fax, e-mail, or other means as designated by Employment Department with the appealable document. 471-040-0005(2)(a).

The request for hearing on decision # L0003889153 was due by May 22, 2024. Because claimant’s second request for hearing was filed on June 1, 2024, it was late. However, on May 13, 2024, claimant used Frances Online to send a message to the Department stating that she wanted to “appeal/request a hearing” on the administrative decision issued “May 2nd” that was “about the work separation.” EAB Exhibit 1 at 1. This message expressed a present intent to appeal and identified decision # L0003889153 as the decision being appealed. It was filed using Frances Online, which was designated in the decision as an authorized means of filing a request for hearing. Therefore, the message met the requirements to be construed as a request for hearing on decision # L0003889153. The request was filed prior to the May 22, 2024, deadline, and therefore was timely. Accordingly, claimant filed a timely request for hearing and is entitled to a hearing on the merits of decision # L0003889153.

DECISION: Order No. 25-UI-282823 is set aside and this matter remanded for a hearing on the merits of decision # L0003889153.

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

DATE of Service: March 28, 2025

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 25-UI-282823 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 desisyong.

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 محكمة الإستئناف 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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