

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0245

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On July 22, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was ineligible for unemployment insurance benefits from June 16, 2024 through August 24, 2024 (weeks 25-24 through 34-24), a school recess period, because claimant's wages and/or hours with other employers were not sufficient to entitle claimant to benefits during the recess period (decision # L0005217499).¹ On August 12, 2024, decision # L0005217499 became final without claimant having filed a request for hearing. On August 30, 2024, claimant filed a late request for hearing. ALJ Scott considered claimant's request, and on September 12, 2024, issued Order No. 24-UI-265913, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by September 26, 2024.

On September 26, 2024, claimant filed a timely response to the appellant questionnaire. On March 27, 2024, the Department served notice of an administrative decision amending decision # L0005217499 by concluding that claimant was permitted to use their educational institution wages during the school recess period identified in decision # L0005217499, and therefore was allowed benefits during that recess period (decision # L0010026765). On March 28, 2025, ALJ Scott issued Order No. 25-UI-287592, re-dismissing claimant's late request for hearing because the administrative decision on which it was based had been amended. On April 17, 2025, claimant filed an application for review of Order No. 25-UI-287592 with the Employment Appeals Board (EAB).

¹ Decision # L0005217499 stated that the employer's school recess period was from June 14, 2024, through August 23, 2024, and that claimant's wages and hours from other employers were not enough to monetarily establish a claim for benefits, but did not specify the resulting period of weeks for which claimant was ineligible for benefits. Given the dates of the school recess period, however, it can be inferred that the Department intended to find claimant ineligible for benefits for weeks 25-24 through 34-24, pursuant to ORS 657.167(1) and (2).

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 decision # L0010026765, 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, stating 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 July 22, 2024, the Department issued decision # L0005217499, which denied claimant benefits for the employer's school recess period identified in that decision. After the decision became final, claimant filed a late request for hearing.

(2) On March 27, 2024, the Department issued decision # L0010026765, which amended decision # L0005217499 by concluding that claimant was allowed benefits during the recess period at issue in decision # L0005217499. EAB Exhibit 1 at 1.

(3) On March 28, 2025, ALJ Scott issued Order No. 25-UI-287592, re-dismissing claimant's late request for hearing because the administrative decision on which it was based had been amended.

CONCLUSIONS AND REASONS: Claimant's late request for hearing on decision # L0005217499 is dismissed.

ORS 657.270(7)(a) provides that an administrative law judge may dismiss a request for hearing if:

(D) The issues are resolved by cancellation or amendment of the decision that is the subject of the hearing request;

* * *

(G) The request for hearing is made by a person who is not entitled to a hearing or is not the authorized representative of a party who is entitled to a hearing.

OAR 471-040-0035 (August 1, 2004) provides:

* * *

(2) An administrative law judge may order that a request for hearing be dismissed upon request of the Director or the Director's authorized representative after either one has:

(a) Issued a new or amended determination or decision that grants the appellant that which was placed in issue by the request for hearing; or

(b) Withdrawn or cancelled the determination or decision upon which the request for hearing was based.

(3) On the administrative law judge's own initiative, an administrative law judge may order that a request for hearing be dismissed if:

* * *

(e) The request for hearing is made by a person not entitled to a hearing on the merits or is made with respect to a determination or decision of the Director or authorized representative with respect to which there is no lawful authority to request a hearing.

Oregon courts follow the principle that a review on appeal may only be provided for justiciable controversies. *See, e.g., Gortmaker v. Seaton*, 252 Or. 440, 442, 450 P.2d 547 (1969). A justiciable controversy exists when the interests of the parties to the action conflict with each other, and the appeal will have some practical effect on the rights of the parties to the controversy. *Barcik v. Kubiacyk*, 321 Or 174, 895 P2d 765 (1995). To show a practical effect on their rights, an appellant must seek “substantive relief” through their appeal. *Krisor v. Henry*, 256 Or. App. 56, 300 P.3d 199 (Or. Ct. App. 2013).

On March 27, 2025, the Department issued decision # L0010026765, which amended decision # L0005217499 by concluding that claimant was allowed benefits during the recess period at issue in decision # L0005217499. As this amended decision resolved the issue in L0005217499 “by cancellation or amendment” of that decision, the ALJ was authorized under ORS 657.270(7)(D) to dismiss claimant’s request for hearing. Additionally, while it is not clear from the record how the ALJ came to learn of the issuance of decision # L0010026765, it can be reasonably inferred, given that the order under review was issued only a day after decision # L0010026765, that the Department requested a dismissal of claimant’s request for hearing. As such, the ALJ was, more likely than not, authorized to dismiss claimant’s request for hearing under OAR 471-040-0035(2) as well.

Further, because the Department resolved the issue in decision # L0005217499 by reversing the denial of benefits, the issue was rendered moot. Therefore, the dismissal was also proper under ORS 657.176(7)(a)(G) and OAR 471-040-0035(3)(e), because the amended administrative decision was favorable to claimant, meaning that no justiciable controversy existed which would have entitled claimant to further relief if the hearing had proceeded.

For the above reasons, claimant’s request for hearing on decision # L0005217499 was properly dismissed.²

DECISION: Order No. 25-UI-287592 is affirmed.

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

DATE of Service: May 13, 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

² Because claimant’s request for hearing is properly dismissed on grounds of mootness and the resolution of the issue addressed in decision # L0005217499, it is not necessary to determine whether claimant had good cause for failing to file a timely request for hearing.

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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311

Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711

Email: appealsboard@employ.oregon.gov

Website: www.Oregon.gov/employ/pages/employment-appeals-board.aspx

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