

State of Oregon  
**Employment Appeals Board**  
875 Union St. N.E.  
Salem, OR 97311

**EMPLOYMENT APPEALS BOARD DECISION**  
**2025-EAB-0297**

*Reversed*  
*Late Request for Hearing Allowed*  
*Merits Hearing Required*

**PROCEDURAL HISTORY:** On November 19, 2021, the Oregon Employment Department (the Department) mailed a Wage and Potential Benefit Report (WPBR) concluding that claimant had insufficient wages in subject employment to establish a monetarily valid claim for benefits. On November 29, 2021, the WPBR became final without claimant having filed a request for hearing. On December 14, 2024, claimant filed a late request for hearing. ALJ Kangas considered the request, and on February 26, 2025, issued Order No. 25-UI-284264, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by March 12, 2025. On March 12, 2025, claimant filed a timely response to the appellant questionnaire. On April 3, 2025, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 25-UI-284264 was vacated and that a hearing would be scheduled to determine whether to allow claimant's late request for hearing and, if so, the merits of the WPBR. On May 12, 2025, ALJ Nyberg conducted the hearing, and on May 13, 2025, issued Order No. 25-UI-292136, re-dismissing claimant's request for hearing as late without good cause, leaving the November 19, 2021, WPBR undisturbed. On May 16, 2025, claimant filed an application for review of Order No. 25-UI-292136 with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) On November 19, 2021, a WPBR issued the day prior was mailed to claimant's address on file with the Department. The WPBR stated, "This form does not include wage credits reported to a federal agency or to any state other than Oregon. Wage credits have been requested from another state or federal agency and you will be advised when they are received." Exhibit 1 at 1. The WPBR also stated, "This report becomes final unless you request redetermination of the report or request a hearing within 10 days." Exhibit 1 at 1.

(2) Claimant did not receive the WPBR when it was mailed. However, on November 18, 2021, the day it was issued, the Department's records reflect that a representative spoke with claimant by telephone and told him that his wages from federal employment were not earned in employment subject to the unemployment insurance program and could not be used in the claim, which therefore was not monetarily valid. Claimant requested reconsideration of the decision during the call because he believed the federal wages were earned in subject employment.

(3) Following the November 18, 2021, telephone call, the Department requested additional information from claimant and the federal employer concerning his earnings, and claimant corresponded with the Department for several months on this issue.

(4) On June 22, 2022, and June 23, 2022, according to the Department's records, claimant again spoke with a Department representative regarding the federal wages and was told that the Department had determined that they were not subject wages and his claim remained not monetarily valid. Claimant expressed disagreement with this determination.

(5) On June 27, 2022, a Department representative noted, regarding the disputed federal wages, "Snd docs to IPCFPC for more recent denial so clmt has time to req hearing. Advd clmt of steps taken[.]"<sup>1</sup>

(6) On June 28, 2022, the Department mailed a copy of a letter originally sent to him in December 2021 stating that the federal wages claimant believed should be included in the WPBR would not be added because they were not earned in subject employment. Claimant continued to correspond with the Department throughout 2022, disputing the exclusion of these wages. The Department did not issue a new, appealable decision affirming the WPBR after determining that claimant's federal wages would not be added.

(7) Eventually, the correspondence between claimant and the Department on this issue stopped, though claimant anticipated receiving an appealable decision formally denying his November 18, 2021, request to amend the WPBR. Claimant came to believe that the Department "forgot about" this request. Audio Record at 29:02.

(8) On December 14, 2024, claimant filed a late request for hearing on the WPBR.

**CONCLUSIONS AND REASONS:** Claimant's late request for hearing is allowed, and the matter remanded for a hearing on the merits of the WPBR.

ORS 657.266(5) provides that the Department's initial monetary determination on a new claim for benefits becomes final unless a party files a request for hearing within 10 days after the date the determination is mailed. 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.

OAR 471-030-0048 (January 11, 2018) provides, in relevant part:

(1) An individual who receives a monetary claim determination under ORS 657.266(2) may request that the determination be amended. The Director upon receipt of such a request will examine wage records submitted to the Department by employers in an attempt to locate wages

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<sup>1</sup> EAB has taken notice of this fact, which is contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). 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 noticed fact(s) will remain in the record.

and/or hours of work alleged by the claimant to be missing. If the discrepancy involves only hours of work and the claimant has provided documentary evidence of hours sufficient to make the claim valid, the Director may issue a redetermination.

(2) If as the result of an investigation additional subject wages or hours of work are made available which either allow a non-valid claim to become valid, or increase the weekly benefit amount of a valid claim, a redetermination will be issued.

(3) If as the result of an investigation all or part of the requested wages or hours of work are not included in the claim determination, the Director will so notify the claimant. If the claimant requested an amended monetary determination as provided in section (1) of this rule within the period specified by ORS 657.266(5), such notice will be given by a determination amending or affirming the initial determination. Such notice shall be subject to appeal as provided in 657.266(5).

\* \* \*

The WPBR was mailed to claimant on November 19, 2021, and the request for hearing on it therefore was due by November 29, 2021. Claimant filed the request for hearing on December 14, 2024, and it was therefore late.

Although it was mailed on November 19, 2021, the WPBR was issued on November 18, 2021. Claimant testified that he did not receive the WPBR in the mail. Audio Record at 27:55. However, the Department's representative testified that according to their records, on November 18, 2021, claimant spoke with a representative by telephone about the WPBR and was told of its conclusions that his wages during the base year from federal employment were not considered to be earned in subject employment "based off what the claimant provided" and, as a result, his claim was not monetarily valid. Audio Record at 19:55. The WPBR itself stated that information about federal wages had been requested, but were not reflected in the WPBR, and that claimant would "be advised when [the information was] received." Exhibit 1 at 1. It is reasonable to infer both that this telephone call served to advise claimant of the Department's initial determination that the federal wages would be excluded from use in his claim, and that claimant requested during the call that the Department reconsider this determination and issue an amended WPBR to include these wages. Claimant's correspondence with the Department in the months that followed, his submission of additional evidence supporting use of the wages, and the Department's additional investigation of the issue support these inferences.

In December 2021, the Department mailed claimant a letter, which is not contained in the record, notifying claimant that the federal wages were determined not to have been earned in subject employment. It is unclear from the record that the Department considered this determination appealable and, if it did, whether the determination letter notified claimant of his right to request a hearing on it.<sup>2</sup> Regardless, the record shows that the Department continued to consider claimant's request to amend the WPBR even after December 2021 by, for example, requesting on May 22, 2022, that claimant provide

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<sup>2</sup> That the Department applied claimant's December 14, 2024 late request for hearing only to the WPBR, and not the December 2021 letter, suggests that the Department did not consider the letter appealable.

his 2021 W-2 form from the federal employer. DR Exhibit 2 at 8.<sup>3</sup> Though the record suggests that by June 27, 2022, a Department representative felt that an appealable decision affirming the WPBR without the federal wages should be issued, the Department instead mailed claimant a copy of the December 2021 letter on June 28, 2022. Included with the copy of the letter was a note stating, “I am providing you my direct email so if you are able to obtain new information from your employer you can email it directly to me.” DR Exhibit 2 at 15. The record shows that claimant requested and received additional information from the federal employer during July 2022, and on August 1, 2022, forwarded that information to the email address provided. *See* DR Exhibit 2 at 11-16. Claimant therefore reasonably considered his November 18, 2021, request that the Department amend the WPBR to still have been pending as of August 2022.

After August 2022, correspondence between claimant and the Department about the disputed wages slowed, and eventually stopped. Claimant testified that he believed that the Department “forgot about” his request to amend the WPBR. Audio Record at 29:02. On December 14, 2024, claimant filed a late request for hearing that the Department applied to the WPBR.

The record does not show that the Department issued an appealable decision affirming the November 18, 2021, WPBR after claimant requested that it be amended to include federal wages. Under OAR 471-030-0048(3), claimant was entitled to such a decision. The Department’s reconsideration of the WPBR for months beyond the 10-day timely appeal period and subsequent failure to issue an appealable decision affirming the WPBR was a factor beyond claimant’s reasonable control that prevented timely filing of a request for hearing on the WPBR. Therefore, good cause exists to extend the filing deadline.

Furthermore, this factor continued through the date claimant filed his late request for hearing. The Department never notified claimant that they formally affirmed the exclusion of federal wages from the WPBR and that the affirmance was appealable, as required by rule. Instead, the Department encouraged claimant for months following their apparent decision in December 2021 to affirm the WPBR to submit further evidence in support of amending it. Therefore, because the factor that prevented timely filing did not end before claimant filed the late request for hearing, the request was filed within a “reasonable time.” Accordingly, claimant’s late request for hearing is allowed, and the matter remanded for a hearing on the merits of the WPBR.

**DECISION:** Order No. 25-UI-292136 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:** June 18, 2025

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<sup>3</sup> Prior to the issuance of Order No. 25-UI-284264 (the direct review order), two exhibits were admitted as evidence, marked “DR Exhibit 1” and “DR Exhibit 2.” At hearing, four additional files were admitted as evidence, each marked “Exhibit 2.” Any citations in this decision to “DR Exhibit 2” refer to the exhibit admitted as evidence in connection with the direct review order.

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 25-UI-292136 or return this matter to EAB. Only a timely application for review of the order mailed to the parties after the remand hearing will return this matter 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.

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

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