

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0749

Reversed & Remanded

PROCEDURAL HISTORY AND FINDINGS OF FACT: On October 15, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant received unemployment insurance benefits to which they were not entitled, and assessing an overpayment of \$745 in regular unemployment insurance (regular UI) benefits and \$900 in Federal Pandemic Unemployment Compensation (FPUC) benefits that claimant was required to repay to the Department (decision # 74651). On November 4, 2021, decision # 74651 became final without claimant having filed a request for hearing. On May 2, 2024, claimant filed a late request for hearing on decision # 74651.

ALJ Scott considered claimant's request, and on July 18, 2024 issued Order No. 24-UI-259522, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by August 1, 2024. On August 7, 2024, Order No. 24-UI-259522 became final without claimant having filed a response to the appellant questionnaire or an application for review of Order No. 24-UI-259522 with the Employment Appeals Board (EAB).

On September 25, 2025, claimant filed a late response to the appellant questionnaire with the Office of Administrative Hearings (OAH). On November 18, 2025, ALJ Kangas issued Order No. 25-UI-311045, declining to consider claimant's questionnaire response because it was late, canceling Order No. 24-UI-259522, and re-dismissing claimant's late request for hearing. On December 4, 2025, claimant filed an application for review of Order No. 25-UI-311045 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 September 25, 2025 response to the appellant questionnaire. This evidence has already been marked as Exhibit 3 in the record, but was not considered by the order under review because it was not timely submitted. Order No. 25-UI-311045 at 1. 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.

Department records suggest that claimant may have actually submitted, or had reason to believe they submitted, a timely questionnaire response; or that they were prevented from doing so due to factors or circumstances beyond their reasonable control. On August 19, 2025, claimant spoke to a Department representative, who entered a note into claimant's claim which stated, in relevant part, "Claimant also said that she had appealed the overpayment decision and was asked to submit more information, but never heard anything about it again." The note also stated, "Claimant does not remember ever getting the hearing order, so I advised claimant I will have a copy of it printed and mailed to her, and from there she can follow the instructions on how to request it be reopened."¹

From the statements in this note, it is reasonable to infer that either claimant submitted or attempted to submit a timely questionnaire response; or was unable to do so because they did not timely receive the original dismissal order issued on July 18, 2024. In either case, the fact that claimant's statements in the questionnaire response were not received by OAH within the time indicated in the dismissal order appear to be due to factors or circumstances beyond claimant's reasonable control. Additionally, the information in claimant's response to the appellant questionnaire is relevant and material to the determination of whether their late request for hearing should be allowed. *See* ORS 657.275(2) and OAR 471-041-0090(1). Therefore, EAB has considered claimant's response to the appellant questionnaire when reaching this decision.

WRITTEN ARGUMENT: Claimant's argument contained information that was not part of the hearing record and did not show that factors or circumstances beyond claimant's reasonable control prevented them from offering the information while the matter was pending before OAH. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered any parts of claimant's argument that were based on the record while the matter was pending before OAH and did not consider information in claimant's written argument that was not contained in the record before OAH, with the exception of Exhibit 3 as explained above.

The parties may offer new information, such as that included in claimant's written argument, into evidence at the remand hearing. At that time, the ALJ will determine if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing about 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 before the hearing at their addresses on the certificate of mailing for the notice of hearing.

CONCLUSIONS AND REASONS: Order No. 25-UI-311045 is set aside and this matter remanded for a hearing on whether claimant's late request for hearing on decision # 74651 should be allowed and, if so, the merits of that decision.

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

¹ EAB has taken notice of these facts, which are 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 facts will remain in the record.

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

The request for hearing on decision # 74651 was due by November 4, 2021. Because claimant did not file their request for hearing until May 2, 2024, the request was late. On their response to the appellant questionnaire, claimant stated that they received decision # 74651 on May 2, 2024, the same date on which they filed their request for hearing. Exhibit 3 at 1. However, claimant also explained in their response that they had requested a waiver of the overpayment assessed by decision # 74651, which they understood to have been approved; but later learned that only the federal portion of the overpayment (i.e., the FPUC benefits) had been waived, and that the remaining state (i.e., regular UI benefits) overpayment was still outstanding. Exhibit 3 at 6. Claimant likewise explained that they “realized the overpayment due still existed when [their] job closed for 2 weeks in 2024, because that’s when [they] logged on”; that they “requested the appeal & never heard back, so [they] assumed the \$ came out of the amount [they] would have received for [their] temporary unemployment in 2024”; and that they felt the state portion of the overpayment “should’ve been waived in 2021.” Exhibit 3 at 6.

The above suggests that, claimant’s initial statement notwithstanding, claimant likely first learned of the overpayment assessed by decision # 74651 in 2021, as they had seemingly applied for and received a (partial) waiver of the overpayment around that time. Even if this is true, however, it is not clear from the record when, if at all, claimant actually received decision # 74651 itself (as opposed to some other means of informing them of the overpayment) and learned of their right to appeal it; or, if they did receive the decision, why they requested a waiver but did not request a hearing on the decision at that time. On remand, the ALJ should develop the record to resolve these questions. Additionally, the ALJ should inquire as to when claimant filed the initial waiver request; when it was granted; the substance of claimant’s communications with the Department when they requested the waiver, including whether they expressed to the Department that they disagreed with decision # 74651 or wished to appeal it; whether the failure to timely file a request for hearing was due to an excusable mistake; when in 2024 claimant learned that part of the overpayment was still outstanding; and what ultimately caused claimant to file the request for hearing on May 2, 2024, as opposed to some other date.

Order No. 25-UI-311045 therefore is reversed, and this matter remanded for a hearing on whether claimant’s late request for hearing should be allowed and, if so, the merits of decision # 74651.

DECISION: Order No. 25-UI-311045 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: January 13, 2026

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 25-UI-311045 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 دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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