

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-1188-R

Request for Reconsideration Dismissed

PROCEDURAL HISTORY: On November 8, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 90856). Claimant filed a timely request for hearing. On November 19, 2018, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for December 5, 2018. On December 5, 2018, ALJ Janzen conducted a telephone hearing, at which claimant appeared and then disconnected after her request for a postponement was denied. On December 7, 2018, ALJ Janzen issued Order No. 18-UI-120924, affirming decision # 90856. On December 26, 2018, claimant filed an application for review with the Employment Appeals Board (EAB). On January 29, 2019, claimant filed a written argument with EAB. On January 30, 2019, EAB issued Appeals Board Decision 2018-EAB-1188, affirming Order No. 18-UI-120924. On February 8, 2019, claimant filed a request for reconsideration. This decision is issued pursuant to EAB's authority under ORS 657.290(3).

CONCLUSIONS AND REASONS: Claimant's request for reconsideration must be dismissed.

Claimant filed a request for reconsideration with EAB complaining that EAB erred by refusing to consider the written argument she submitted to EAB on January 28, 2019 when reaching Appeals Board Decision 2018-EAB-1188. OAR 471-041-0145 provides that any party may request reconsideration of an EAB decision. However, requests for reconsideration are "subject to dismissal unless" the party requesting it "[i]ncludes a statement that a copy has been mailed to the other parties." OAR 471-041-0145(2)(a). Claimant's request for reconsideration did not include such a statement, and is therefore dismissed.

Even if the rules governing requests for reconsideration had allowed EAB to consider claimant's request for reconsideration, the outcome of this case would remain the same. The EAB decision that claimant claimed was error was the following paragraph in Appeals Board Decision 2018-EAB-1188:

On January 17, 2019, claimant requested that the time period to submit a written argument be extended to January 29, 2019. EAB granted claimants' request. On January 28, 2019, claimant submitted her written argument. However, claimant failed to certify

that she provided a copy of her argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). EAB therefore did not consider claimant's written argument when reaching this decision.

Claimant argued that EAB should not have refused to consider her written argument because she "was never informed by telephone or mail . . . that I needed to send a copy to the opposing side." She also complained that EAB should have told her about that when she called "to make sure all the information [she] faxed the day before was correct." Claimant asked that EAB "correct this mistake as [she] was not informed that [she] needed to submit the Written Argument to the other party." See claimant's reconsideration request.

Claimant's claim that she was never informed that she needed to send a copy of her written argument to the other party to her case is incorrect. That requirement was first communicated to claimant around December 7, 2018 through a document called "Rights of Review of An Order" that is routinely included with ALJ orders mailed to parties and was, more likely than not, included with the order mailed to her on that date. The "Rights of Review" document says at the bottom of page two, in a section called "Written Argument," that "A party's argument will not be considered unless it: (a) Includes a statement that a copy has been provided to the other parties."

Even in the unlikely event that the Office of Administrative Hearings did not mail that document to claimant, EAB mailed a letter to claimant on December 28, 2018 called "Notice of Receipt of Application for Review." The second side of that letter, outlined in a bold black box, stated "A party's written argument will not be considered unless it: (a) Includes a statement that a copy has been provided to the other parties."

Claimant was therefore informed, in writing, on two occasions, that she needed to send a copy of her argument to the other party to this case. The fact that she did not do so is not EAB's error.

With respect to being told that "everything was fine" during a phone call with EAB's office, receiving confirmation that a fax was received, or that the number of pages faxed matched the number of pages received, or that the pages received were legible, cannot reasonably be construed as confirmation that the contents of the fax itself were legally sufficient or adequately complied with the applicable administrative rules. EAB's confirmation that claimant's fax was received, or even received on time, did not cause claimant to submit a written argument that did not comply with the rules of which she had been notified, nor did EAB's failure to provide claimant with legal advice about the sufficiency of her fax result in claimant's failure to satisfy the procedural requirements with which she had failed to comply.

For the reasons explained, claimant's request for reconsideration is dismissed. Even if EAB had not dismissed the request, and had reconsidered its decision not to admit claimant's written argument, the outcome of that decision would have remained the same. EAB will take no further action with respect to claimant's case. If claimant wishes to further dispute EAB's decisions in this matter, a notice of appeal rights has been included with both decisions below the date of service.

DECISION: Claimant's request for reconsideration is dismissed. Appeals Board Decision 2018-EAB-1188 and Order No. 18-UI-120924 remain undisturbed.

J. S. Cromwell and D. P. Hettle;
S. Alba, not participating.

DATE of Service: February 8, 2019

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 listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at courts.oregon.gov. Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. 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 Asuntos Laborales. Si no está de acuerdo con esta decisión, puede presentar una Petición 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 ໄດ້ ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄໍາຕັດສິນນີ້.

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
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.