

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0088

Reversed
Request to Reopen Granted

PROCEDURAL HISTORY: On October 26, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant, not for misconduct (decision # 105454). On October 31, 2018, the employer filed a timely request for hearing. On November 13, 2018, the Office of Administrative Hearings (OAH) served notice of a telephone hearing scheduled for November 26, 2018. On November 26, 2018, ALJ Scott conducted a hearing at which claimant failed to appear and issued Order No. 18-UI-120211, concluding that claimant's discharge by the employer was for misconduct. On December 10, 2018, claimant filed a timely request to reopen the November 26, 2018 hearing. On January 7, 2019, ALJ Scott conducted a hearing on claimant's request for a reopening and issued Order No. 19-UI-122232, denying the request. On January 28, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record. Claimant submitted written argument but it was not received by EAB within the time period allowed under OAR 471-041-0080(1) (October 29, 2006). *See* OAR 471-041-0065(1)(c) (October 29, 2006). EAB therefore did not consider claimant's written argument when reaching this decision.

FINDINGS OF FACT: (1) On October 26, 2018, the Department mailed notice of decision # 105454 to claimant at her address in Portland, Oregon. Decision # 105454 stated that the employer discharged claimant, not for misconduct, and that claimant therefore was allowed benefits if otherwise eligible. Claimant filed weekly claims for benefits on November 5, 13, 19 and 26, 2018, and was paid benefits for the weeks claimed.¹

¹ We take notice of this fact, which is contained in Employment Department records. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our

(2) On November 13, 2018, OAH mailed notice of the November 26, 2018 hearing on decision # 105454 to claimant's Portland address. On November 17, 2018, claimant's family asked her to fly to Mississippi because claimant's grandmother had been seriously injured and placed in hospice care. On November 21, 2018 claimant flew to Mississippi expecting to return to Portland within a few days. Claimant ultimately remained in Mississippi for 13 days and returned to Portland on December 4, 2018. She did not make arrangements for someone to check her mail during her absence.

(3) As of claimant's departure on November 21, 2018, she had not received the November 13th notice of the November 26th hearing on decision # 105454 in the mail. The notice of hearing was delivered to claimant's Portland address while she was in Mississippi. Claimant first saw the notice of hearing after returning to Portland on December 4th and checking the mail delivered to her address during her absence.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude that claimant had good cause for failing to appear at the November 26, 2018 hearing on decision # 105454. Claimant's request to reopen the hearing therefore is granted.

ORS 657.270(5) provides that any party who failed to appear at a hearing may request to reopen the hearing, and the request will be allowed if it was filed within 20 days of the date the hearing decision was issued and shows good cause for failing to appear. "Good cause" exists when the requesting party's failure to appear at the hearing arose from an excusable mistake or from factors beyond the party's reasonable control. OAR 471-040-0040(2) (February 10, 2012).

In Order No. 19-UI-122232, the ALJ concluded that claimant failed establish good cause for failing to appear at the November 26th hearing, reasoning as follows: Although it was possible that, as claimant testified, the November 13th notice of hearing had not been delivered by the time she left town on November 21st, it more likely had been. Even if the notice of hearing had not arrived before claimant left, it was within her reasonable control to make arrangements with someone to collect and monitor her mail during her absence. Claimant knew or should have known that she needed to do so given that she was filing weekly claims for benefits. Although claimant testified that she did not know how long she would be gone when she left, when her absence stretched longer than she anticipated, it was within her reasonable control to make arrangements with someone near her residence to retrieve her mail and notify her of anything important. If claimant had done so before November 26th, she would have been able to call into the hearing. Claimant's failure to appear at the hearing therefore was not beyond her reasonable control or an excusable mistake.²

We first disagree with the ALJ's assertion that the record shows the notice of hearing likely had been delivered before claimant left town on November 21st. At hearing, claimant testified that she checked her mail, which arrived in the afternoon, on a daily basis; that she did not see the November 13th notice of hearing in the mail she received before leaving town on November 21st; and that she first saw the notice of hearing when she returned and checked the mail she received during her absence. Audio Record at 12:15-12:45, 13:40-14:20, 17:30-18:35. Absent evidence to the contrary, or a basis for finding

mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.

² Order No. 19-UI-122232 at 4.

that claimant was not a credible witness, her testimony was sufficient to establish that the notice of hearing had not arrived before she left town on November 21st.

And although we agree that it likely was within claimant's reasonable control to make arrangements with someone to monitor her mail during her absence, at least before she left, we disagree that claimant's failure to do so was not an excusable mistake. Although claimant was filing weekly claims for benefits, she was being paid those benefits after decision # 105454 had concluded that the employer discharged claimant, not for misconduct, and that claimant therefore was allowed benefits if otherwise eligible. When claimant left town on November 21st, six days after the deadline for requesting a hearing on decision # 105454 had passed, she had no reason to believe that the employer had requested a hearing, let alone that a hearing had been scheduled, or that her eligibility for benefits was otherwise at issue. Claimant therefore had no reason to expect correspondence from the Department regarding her eligibility for benefits during her relatively brief absence, let alone notice of a hearing on decision # 105454 scheduled for a date prior to her return. Thus, although claimant's failure to make arrangements with someone to monitor her mail during her absence was, in retrospect, a mistake, we conclude it was an excusable mistake under the circumstances.

Claimant therefore had good cause for failing to appear at the November 26th hearing. Her request to reopen the hearing is granted.

DECISION: Order No. 19-UI-122232 is set aside, as outlined above.

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

DATE of Service: February 28, 2019

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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 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 ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

Arabic

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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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