

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0107

Affirmed
Request to Reopen Denied

PROCEDURAL HISTORY: On November 29, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 115748). On December 10, 2018, claimant filed a timely request for hearing. On December 19, 2018, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for January 2, 2019, at which time both parties failed to appear. On January 2, 2019, ALJ Murdock issued Order No. 19-UI-121979, dismissing claimant's request for hearing due to his failure to appear. On January 7, 2019, claimant filed a request to reopen the January 2nd hearing. On January 11, 2019, ALJ Kangas considered claimant's request and issued Order No. 19-UI-122632, denying the request. On January 30, 2019, claimant filed an application for review of Order No. 19-UI-122632 with the Employment Appeals Board (EAB).

Claimant submitted a written argument for EAB's consideration. Under OAR 471-041-0080(2)(a) (October 29, 2006) claimant was required to certify in her written argument that she provided a copy of it to the other parties. Claimant did not include such a certification. Claimant's argument also included additional evidence relating to her timing when seeking benefits, her work with a caseworker, that claimant "had only recently tapered off from anxiety medication at the time she became able to work and begin the process of seeking benefits," and "that her decompensation from medication was sufficiently recent to negatively affect her cognition." Under OAR 471-041-0090(2) (October 29, 2006) additional evidence is only admissible before EAB if the party offering it shows that factors or circumstances beyond her reasonable control prevented her from offering the information during the hearing. Claimant's argument did not include such a showing. For each of those reasons EAB was not able to consider the contents of claimant's written argument when reaching this decision.

Even if claimant's argument had complied with the procedural requirements set forth in the administrative rules applicable to EAB review, the outcome of this case would remain the same. Claimant argued that her reliance on communication from Ms. Werner about her unemployment benefits was reasonable because the communication was from "an *HR* person with *US Bank*." (Emphasis in original written argument.) As a preliminary matter, nothing in the notice of hearing or other materials provided to claimant suggests that an employer's withdrawal from participation in a case would either cancel a hearing or award a claimant benefits. Additionally, the emails Ms. Werner sent to claimant did not state that claimant's benefits would be allowed, and did not tell her that the hearing was in fact canceled. The emails stated, rather, that claimant "should be notified" that the employer was "withdrawing," that "[t]his should award you unemployment, but if there are any other issues, please let me know," and to "be on the lookout for the official word from the Unemployment Agency, just to be safe." When gauging the reasonableness of claimant's reliance on Ms. Werner's emails as the basis of her assumption that the hearing was canceled, it is notable that Ms. Werner used terms like "should," suggested the possibility of "other issues" affecting claimant's unemployment, and that Ms. Werner's final communication to claimant included the statement that the "official word" about matters related to the employer's "withdrawal" would come from the Department, not from Ms. Werner.

For those reasons, considered in their totality, the emails did not give claimant an objectively reasonable basis for relying on Ms. Werner's statements about what "should" happen with claimant's unemployment claim or hearing. That is so, particularly when considered in light of the official instructions contained on the actual notice of hearing the Office of Administrative Hearings sent to claimant, which specifically stated to claimant that "you must call" into the hearing, and that if she did not call into the hearing at the designated date and time, "the hearing will be dismissed." (Emphasis in original notice of hearing.) It is also notable in weighing claimant's reaction to Ms. Werner's emails that claimant is the party who had requested the hearing because she had been denied benefits, not the employer. There is no reasonable basis in this record to conclude that the employer's "withdrawal" would alter the fact that the Department had issued a decision denying claimant benefits, nor that the employer's "withdrawal" would affect or alter the date or time of the hearing that claimant herself had requested. On this record, claimant's reliance on Ms. Werner's emails as the basis for her assumption that the hearing was canceled and, presumably, that she would no longer be denied unemployment insurance benefits, was not objectively reasonable.

Claimant also argued that her reliance on Ms. Werner's emails was subjectively reasonable because claimant's "decompensation from medication was sufficiently recent to negatively affect her cognition." Unfortunately, other than that assertion by claimant's representative in written argument, the record lacks evidence establishing what claimant's cognitive abilities were at the time in question, or substantiating that her cognition was being affected by a decrease in her medication dosage at that time. The documents claimant submitted with her request to reopen mostly concerned her health status through June 2018. Claimant's written timeline of events ended with a note about the continuation of her prior symptoms and an increase in her blood pressure medication in September 2018, followed by a note about her September 14, 2018 resignation, but did not address the subsequent period with any specificity. She alluded to having recovered enough to seek work between September 2018 and when she began claiming benefits, but she did not suggest what her recovery entailed, state that her recovery included a reduction in her anxiety medication dosage, or explain that any such reduction in dosage was affecting her cognition at that time. The information available on this record therefore does not address claimant's condition around the time of the December 28th emails from Ms. Werner and the January 2nd

hearing. The record does not substantiate that claimant's cognitive abilities during the relevant time were diminished, and therefore does not suggest that a cognitive defect made her susceptible to being unintentionally misled by Ms. Werner's emails, caused her failure to attend the January 2nd hearing, or otherwise amounted to good cause to reopen the January 2nd hearing in this case.

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the Order under review is **adopted**.

DECISION: Order No. 19-UI-122632 is affirmed.

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

DATE of Service: February 21, 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.

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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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