

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0167**

*Reversed*  
*Request to Reopen Allowed*

**PROCEDURAL HISTORY:** On September 21, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision assessing a \$531 overpayment (decision # 92049). On October 11, 2018, decision # 92049 became final without claimant having filed a timely request for hearing. On November 13, 2018, claimant filed a late request for hearing. On November 16, 2018, ALJ Kangas issued Order No. 18-UI-119839, dismissing claimant's late request for hearing subject to his right to renew the request by responding to an appellant questionnaire by November 30, 2018. On November 27, 2018, claimant responded to the questionnaire. On December 3, 2018, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 18-UI-119839 was canceled. On December 11, 2018, OAH mailed notice of a hearing scheduled for December 28, 2018, at which claimant failed to appear. On December 31, 2018, ALJ R. Frank issued Order No. 18-UI-121922 re-dismissing claimant's late request for hearing for failure to appear at the hearing. On January 7, 2019, claimant filed a timely request to reopen the December 28<sup>th</sup> hearing. On January 31, 2019, ALJ R. Frank conducted a hearing, and on February 6, 2019 issued Order No. 19-UI-124127 denying claimant's request to reopen. On February 14, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Claimant received the notice of hearing scheduling the December 28, 2018 hearing and planned to attend. A couple minutes before the 2:30 p.m. hearing claimant began attempting to call into the hearing conference line as instructed on the notice of hearing. He received a busy noise or fax sound and was unable to complete the call. Claimant made repeated attempts to call into the hearing conference line without completing the call, and missed the hearing.

(2) After making exhaustive attempts to call into the hearing conference line claimant consulted the notice of hearing. At that point, he saw there was an alternative number to call, dialed that number, and was told that he missed the hearing and would have to request reopening.

**CONCLUSIONS AND REASONS:** We disagree with the ALJ and conclude that claimant established good cause to reopen the December 28<sup>th</sup> hearing.

ORS 657.270(5) provides that any party that missed the hearing may request that it be reopened. The request may be allowed if it is filed within 20 days after the ALJ's Order was issued, and if the party requesting reopening shows good cause for failing to appear. OAR 471-030-0040(2) defines "good cause" to include "an excusable mistake or [] factors beyond an applicant's reasonable control."

The ALJ concluded that claimant filed a timely request to reopen. Order No. 19-UI-124127 at 3. We agree. The ALJ also concluded that "it was more likely than not within claimant's reasonable control" to have called the alternative phone number on the notice of hearing within five minutes of the hearing time when he was unable to appear using the hearing conference line phone number. *Id.* at 4. We agree that doing so was likely within claimant's reasonable control, as he had the notice of hearing with him and the notice of hearing included instructions to call the alternative phone number.

However, the ALJ also concluded that claimant did not demonstrate "good cause" for missing the hearing without considering whether or not claimant's failure to call the alternative phone number was an "excusable mistake." *Id.* at 3-4. We disagree with the ALJ, and conclude that the ALJ erred in reaching a conclusion about whether claimant had good cause to reopen the hearing without considering whether missing the hearing was the result of an excusable mistake.

Generally speaking, an excusable mistake occurs when someone makes a mistake that raises a due process issue, or when the mistake was the result of inadequate notice, resulted from one's reasonable reliance on another person to complete a task, or arises from one's inability to follow directions despite substantial efforts to comply. Claimant made substantial and prolonged efforts to comply with the instructions that he received on the notice of hearing, unfortunately to the exclusion of trying the alternative phone number within the designated time period, which caused him to miss the hearing. Missing the hearing therefore appears to have been the result of a mistake associated with his substantial efforts and inability to comply with the alternative instructions, and was therefore an excusable mistake.

Claimant failed to appear at the hearing because of an excusable mistake. He therefore demonstrated good cause to reopen the December 28<sup>th</sup> hearing.

In reaching this decision, we note that the reason for the December 28<sup>th</sup> hearing was to determine whether or not claimant had "good cause" for his late request for hearing on decision # 92049. Only if claimant establishes good cause for that late request for hearing would the merits of that decision be at issue. Additionally, the *only* issue decided in decision # 92049 was that claimant was overpaid \$531 in unemployment insurance benefits during week 34-18, and decision # 92049 specifically stated, "**CASH REPAYMENT IS NOT REQUIRED.**" (Emphasis in original.)

However, it appears from looking at claimant's submissions in this case that claimant might be under the impression that the underlying decision in this matter is broader than just that issue. Claimant's initial late request for hearing in this case referenced a billing statement, a work separation from an employer, and exhaustive attempts to look for work while unemployed, and claimant's appellant questionnaire referenced his receipt of "a bill for 13,000." Those matters are not at issue here. The merits of this case involve only a \$531 overpayment and does *not* obligate claimant to make a cash repayment. In other words, even if claimant proves good cause for the late request for hearing in this case and has a hearing on the merits of decision # 92049, it will not affect any billing statements he has received, he will not be able to dispute any work separations, he will not be able to dispute any decisions about whether or not he actively sought work while unemployed, and he will not be able to dispute a \$13,000 bill from the Department. If the Department has denied benefits to claimant for any of those reasons, or is billing

claimant for repayment of an overpayment, claimant should understand that those matters are not connected to this case. If he has not already done so, claimant should understand that he claimant must specifically request hearings on those other matters before being potentially eligible to be heard on them.

**DECISION:** Order No. 19-UI-124127 is set aside, as outlined above.

J. S. Cromwell and S. Alba;  
D. P. Hettle, 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](http://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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