

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0212

Reversed
Request to Reopen Allowed

PROCEDURAL HISTORY: On October 23, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from August 26, 2018 to October 20, 2018 (decision # 112035). On November 7, 2018, claimant filed a timely request for hearing. On December 18, 2018, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for January 2, 2019. On January 2, 2019, ALJ Snyder issued Order No. 19-UI-121988, dismissing claimant's request for hearing because she had failed to appear at the hearing. On January 9, 2019, claimant filed a timely request to reopen the January 2nd hearing. On January 23, 2019, OAH mailed notice of a hearing scheduled for February 5, 2019. On February 5, 2019, ALJ Snyder conducted a hearing, and on February 8, 2019 issued Order No. 19-UI-124302, denying claimant's request to reopen the January 2nd hearing. On February 27, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision.

FINDINGS OF FACT: (1) At some point prior to the period at issue, claimant participated in another unemployment insurance hearing. She understood based on that prior experience that she would receive notice of a scheduled hearing in the mail within a month or two of requesting a hearing.

(2) Claimant received decision # 112035, disagreed with it, and filed a timely request for hearing. Sometime between filing her November 7, 2018 request for hearing and December 18, 2018, claimant received a letter from OAH stating that OAH had received her request for hearing and a hearing would be scheduled in six to eight weeks. Thereafter, claimant waited to receive a notice of hearing.

(3) Between the time claimant received the letter from OAH and January 2019 claimant checked her mail three to four times per week. Claimant had experienced mail delivery problems related to her and her mother's changes of address, and had also failed to receive one important bill in the mail. She watched her mail for a notice of hearing and did not receive one.

(4) After the January 2, 2019 hearing was dismissed, claimant received notice of Order No. 19-UI-121988, which dismissed claimant's request for hearing because she failed to appear at the hearing. Around that time claimant also received a \$20,000 bill from the Department. Claimant was distracted by the bill but wanted to pursue reopening the hearing. Using the application for review form that had been attached to Order No. 19-UI-121988 and a written statement, she timely requested reopening.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude that claimant has good cause to reopen the January 2nd hearing on decision # 112035.

ORS 657.270(5)(a) and (c) provide that any party that missed a hearing may request that it be reopened, and that the request will be allowed if the party files a timely request to reopen and shows good cause for failing to appear at the hearing. OAR 471-040-0040(2) (February 10, 2012) defines "good cause" as "an excusable mistake or . . . factors beyond an applicant's reasonable control."

Claimant alleged she failed to appear at the hearing because she did not receive the notice of hearing that scheduled the hearing. ORS 40.135(1)(q) provides that a letter duly directed and mailed is presumed to have been received by the intended recipient in the regular course of the mail. However, that presumption may be rebutted by circumstantial evidence suggesting non-receipt.

The ALJ concluded that claimant did not show good cause to reopen the January 2nd hearing in this case because she "demonstrated confusion as to what documents she did and did not receive."¹ In support of that conclusion, the ALJ found it significant that claimant was not aware she had sent her request for hearing in an envelope pre-addressed to the wrong state office, and did not recall receiving the Order dismissing her request for hearing.²

We disagree that claimant's inadvertent use of a pre-addressed envelope on November 7th is a legally significant factor when weighing whether or not she received the notice of hearing that was mailed to her on December 18th. Likewise, claimant's failure to remember receiving the Order dismissing her request for hearing for failure to appear in early January 2019 is not significant. Regardless of her recollection, there is no dispute that she received it, especially given that she did in fact use the application for review tear-off form to request reopening.

Claimant testified that this matter was very important to her, she received a letter telling her to expect a notice of hearing, she watched her mail looking for that notice, and she never received it. The record is unrefuted that claimant had previously had mail delivery problems, had not received one bill mailed to

¹ Order No. 19-UI-124302 at 3.

² *Id.*

her, and had not received another packet of documents.³ Given those factors, claimant has presented sufficient circumstantial evidence suggesting the likelihood that she did not receive notice of the January 2nd hearing. Her failure to attend that hearing was therefore the result of factors beyond her reasonable control, and she has shown good cause to reopen the hearing.

DECISION: Order No. 19-UI-124302 is set aside, as outlined above.

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

DATE of Service: March 11, 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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³ The Department’s representative suggested on cross-examination that perhaps claimant only failed to receive documents that she did not want to receive, such as the bill, or the notice of hearing, or the documents the Department had sent her for the February 5th hearing. Claimant rebutted the Department’s suggestion by admitting she had received documents related to a previous unemployment insurance hearing and the letter OAH sent to notify her that OAH was scheduling a hearing in this matter. Claimant plausibly claimed that it would have been illogical for her to ignore documents related to the Department’s assessment of a \$20,000 debt. Claimant also only alleged that she had failed to receive one other bill for \$80. The evidence therefore does not suggest it is more likely than not that claimant engaged in a pattern of behavior in which she neglected bills or ignored important mail from the Department, nor did it establish that it was more likely than not that she received notice of the January 2nd hearing in this case.



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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