

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0413

Order No. 19-UI-126891 Affirmed ~ Request to Reopen Denied
Order No. 19-UI-122747 Affirmed ~ Disqualification

PROCEDURAL HISTORY: On November 5, 2018, the Oregon Employment Department (the Department) served, by mail, notice of an administrative decision concluding that claimant quit working for the employer with good cause (decision # 153520). The employer filed a timely request for hearing. On January 3, 2019, the Office of Administrative Hearings (OAH) served, by mail, notice of a hearing scheduled for January 15, 2019. On January 15th, ALJ Turner conducted a hearing, at which claimant failed to appear, and issued Order No. 19-UI-122747 concluding that claimant did not have good cause to quit working for the employer. On January 24, 2019, claimant filed a timely request to reopen the hearing. On March 20, 2019, ALJ Meerdink conducted a hearing on claimant's request for a reopening, and on March 22, 2019 issued Order No. 19-UI-126891 denying the request.

On April 4, 2019, claimant filed a timely application for review with the Employment Appeals Board (EAB) that was construed as a timely application for review of Order No. 19-UI-126891 and Order No. 19-UI-122747. Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Order No. 19-UI-126891 and Order No. 19-UI-122747. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2019-EAB-0356 and 2019-EAB-0413).

REQUEST TO REOPEN

FINDINGS OF FACT: (1) Claimant lived outside Ashland, Oregon approximately 3.5 miles from his mailing address in Ashland. His vehicle did not run well and was very low on gas, so he relied on neighbors to drive him to Ashland to conduct work search activities and occasionally pick up his mail. Decision # 153520 was delivered to claimant's mailing address, where he picked it up on or before December 28, 2018. Decision # 153520 stated that the employer had the right to appeal the decision if it did not believe the decision was correct. After receiving decision # 153520, claimant continued filing weekly claims for benefits.

(2) The January 3rd notice of hearing was delivered to claimant's mailing address. From January 3rd to January 22nd, claimant had neighbors drive him to Ashland to conduct work search activities

approximately six times. However, claimant did not have a neighbor drive him to pick up his mail until January 22nd, at which time he learned he had missed the January 15th hearing, and that Order No. 19-UI-122747 had been issued, concluding that he quit working for the employer without good cause.

CONCLUSIONS AND REASONS: Claimant's request to reopen the January 15th hearing is denied.

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 granted 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). Good cause does not include failure to receive a document due to not notifying the Department or OAH of an updated address while the person is claiming benefits or if the person knows, or reasonably should know, of a pending appeal. OAR 471-040-0040(2)(b)(A).

Here, claimant failed to appear at the January 15th hearing because he did not pick up his mail between December 28th and January 22nd, and therefore did not personally receive the January 3rd notice of hearing until after the hearing. Claimant failed to show that it was beyond his reasonable control to have neighbors drive him pick up his mail often enough to have received the notice of hearing in time to appear at the hearing. Claimant's failure to do so was not an excusable mistake because he was still claiming benefits after having received decision # 153520 in the mail, which he knew or reasonably should have known the employer might appeal, and therefore should have been checking for mail from the Department more often.

Claimant failed to establish good cause for failing to appear at the January 15th hearing, and his request to reopen the hearing is denied.

WORK SEPARATION

On *de novo* review of the entire hearing record and pursuant to ORS 657.275(2), Order No. 19-UI-122747, which concluded that claimant quit working for the employer without good cause, is **adopted**.

DECISION: Order No. 19-UI-126891 and Order No. 19-UI-122747 are affirmed.

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

DATE of Service: May 2, 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 desisyong ito.

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.

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