

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0447**

*Reversed*  
*Request to Reopen Granted*

**PROCEDURAL HISTORY:** On March 4, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause (decision # 112334). Claimant filed a timely request for hearing. On March 14, 2019, the Office of Administrative Hearings (OAH) served, by mail, notice of a telephone hearing scheduled for March 28, 2019 at 3:30 p.m. On March 28<sup>th</sup>, claimant failed to appear at the hearing, and on March 29, 2019 ALJ Janzen issued Order No. 19-UI-127276, dismissing claimant's request for hearing due to his failure to appear. Claimant filed a timely request to reopen the hearing. On April 25, 2019, ALJ Snyder conducted a hearing, and on May 3, 2019 issued Order No. 19-UI-129293, denying claimant's request to reopen the hearing. On May 8, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument with his application for review, but the argument was not relevant to whether claimant's request to reopen the March 28<sup>th</sup> hearing should be allowed. EAB did not consider claimants' written argument when reaching this decision. *See* OAR 471-041-0090 (October 29, 2006).

**FINDINGS OF FACT:** (1) The March 14<sup>th</sup> notice of hearing stated that the telephone hearing was scheduled for March 28<sup>th</sup> at 3:30 p.m., at which time claimant had to call in to the hearing and enter an access code followed by the “#” key. The notice of hearing did not state that claimant also would be required to enter a Personal Identification Number (PIN).

(2) The notice of hearing further stated that if either an ALJ or OAH representative did not appear in the hearing within 5 minutes of the scheduled start time of the hearing, or if a party was having difficulty calling in for the hearing, the party should hang up and call an alternate number. Claimant received the notice of hearing in the mail and planned to appear at the hearing.

(3) On March 28<sup>th</sup>, claimant called into the hearing in time to appear and entered the access code followed by the “#” key. He then was prompted to enter a PIN. Claimant believed he was being prompted to enter the PIN he used when claiming benefits. Claimant entered the PIN but it was rejected. Claimant kept reentering the PIN but it kept being rejected. At approximately 3:50 p.m., claimant gave

up and called the alternate number provided in the notice of hearing, but was informed that the hearing was dismissed because claimant failed to appear.

**CONCLUSIONS AND REASONS:** Claimant's request to reopen the March 28<sup>th</sup> hearing on decision # 112334 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).

Order No. 19-UI-129293 concluded that claimant failed to establish good cause for failing to appear at the March 28<sup>th</sup> hearing because it was within his reasonable control to follow the instructions in the notice of hearing and call the alternate number within five minutes of the scheduled start of his hearing. However, claimant failed to appear at the hearing primarily because, after entering the access code as instructed, he was prompted to enter an unknown PIN, which was a factor beyond his reasonable control. And given that claimant's need to call the alternative number was due to factors beyond his reasonable control, his failure to stop reentering the PIN he reasonably believed should work and call the alternate number sooner than he did was an excusable mistake. Claimant therefore had good cause for failing to appear at the hearing.

Claimant's request to reopen the March 28<sup>th</sup> hearing on decision # 112334 is granted.

**DECISION:** Order No. 19-UI-129293 is set aside, as outlined above.

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

**DATE of Service:** May 23, 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 ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄຳຕັດສິນນີ້.

**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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