

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0448

Reversed – Revocada

Request to Reopen Granted – Petición Para Reapertura Es Concedida

Hearing on Decision #155958 Required – Se Requiera una Audiencia Sobre la Decisión #155958

PROCEDURAL HISTORY: On March 28, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # 155958). Claimant filed a timely request for hearing. On April 8, 2019, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for April 19, 2019 at 1:30 p.m.; on April 9, 2019, OAH served a change in notice of the prior hearing, re-scheduling the hearing for April 19, 2019 at 3:30 p.m., and on the same date served another notice of a hearing scheduled for April 22, 2019 at 3:30 p.m.¹ On April 22, 2019, ALJ Meerdink attempted to conduct a hearing at 3:30 p.m. but claimant failed to appear. On April 23, 2019, ALJ Meerdink issued Order No. 19-UI-128617, dismissing claimant's request for hearing due to his failure to appear. On April 29, 2019, claimant filed a timely request to reopen the hearing. ALJ Kangas reviewed claimant's request to reopen, and on May 2, 2019, issued Order No. 19-UI-129243, denying his request. On May 9, 2019, claimant filed an application for review of Order No. 19-UI-129243 with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) OAH mailed claimant three notices of three separate hearings. Although one of the notices mailed on April 9th stated that it was a change to a previously issued notice of hearing, and therefore canceled a previously scheduled hearing, the other notice mailed to claimant the same day did not, and scheduled the hearing in this matter for two different dates.

(2) A hearing was held pursuant to the April 9, 2019 notice of a hearing that scheduled the hearing for April 22, 2019 at 3:30 p.m. Order No. 19-UI-128617 dismissed claimant's request for hearing due to his failure to appear.

¹ The April 8, 2019 notice purporting to schedule the April 19th 1:30 hearing is marked as EAB Exhibit 1. The April 9, 2019 notice purporting to schedule the April 19th 3:30 p.m. hearing is marked as EAB Exhibit 2. The April 9, 2019 notice purporting to schedule the April 22nd 3:30 p.m. hearing is marked as EAB Exhibit 3. Copies of EAB Exhibits 1, 2, and 3 are included with the copies of this decision mailed to the parties. Any party that objects to the admission of EAB Exhibits 1, 2, and 3 may do so at the hearing on remand. Unless the ALJ sustains the objection, the exhibits will remain in the record.

(3) In his request to reopen, claimant did not provide any information why he failed to appear at the April 22, 2019 hearing. Order No. 19-UI-129243 dismissed claimant's request to reopen because he failed to include a written statement with his request to reopen that showed good cause for failing to appear at the April 22, 2019 hearing.²

CONCLUSIONS AND REASONS: Order No. 19-UI-129243 is reversed. Claimant is entitled to a new hearing on the merits of decision # 155958.

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). Parties filing a request to reopen are required to "set forth the reason(s) for missing the hearing in a written statement, which the Office of Administrative Hearings (OAH) shall consider in determining whether good cause exists for failing to appear at the hearing." OAR 471-040-0040(3).

Here, claimant filed his request to reopen within 20 days of the date the hearing decision was issued, however, he did not include a written statement with his request that explained why he failed to appear at the hearing. Despite claimant's failure to comply with the requirements of OAR 471-040-0040(3), the hearing in this case should be reopened to remedy a failure of fundamental due process in this case resulting from OAH's failure to provide claimant with reasonable notice of the hearing.

When a party fails to appear for a hearing, the first issue is whether the absent party was afforded due process of law, i.e., whether the notice of hearing provided sufficient information to notify the absent party of the time, date and place of the hearing. If not, a continuance is in order. If, despite the lack of adequate notice, a decision is issued, the decision may be challenged by the absent party on due process grounds. As stated above, OAH mailed claimant two notices of hearing and a change in notice of the prior hearing, all indicating different times and/or dates for the hearing. It is impossible to tell from this record what date and time claimant was actually expected to appear for a hearing on decision # 155958. These contradictory notices therefore did not reasonably apprise the parties to this case of the date and time set for the hearing, and amounted to a failure to provide claimant with reasonable notice of the hearing. Claimant, therefore, lacked sufficient notice of the scheduled hearing. Because the claimant was deprived of a reasonable opportunity for a fair hearing on the merits of decision # 155958, Order No. 19-UI-129243 is reversed. Claimant is entitled to a hearing on the merits of decision # 155958.

DECISION: Order No. 19-UI-129243 is reversed. *La Orden de la Audiencia 19-UI-129243 es revocada.*

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

DATE of Service: May 20, 2019

² Order No. 19-UI-129243, page 3.

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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.

NOTA: Usted puede apelar esta decisión presentando una solicitud de revisión judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) dentro de los 30 días siguientes a la fecha de notificación indicada arriba. Ver ORS 657.282. Para obtener formularios e información, puede escribir a la Corte de Apelaciones de Oregon, Sección de Registros (Oregon Court of Appeals/Records Section), 1163 State Street, Salem, Oregon 97310 o visite el sitio web en courts.oregon.gov. En este sitio web, hay información disponible en español.

Por favor, ayúdenos mejorar nuestros servicios por llenar el formulario de encuesta sobre nuestro servicio de atención al cliente. Para llenar este formulario, puede visitar <https://www.surveymonkey.com/s/5WQXNJH>. Si no puede llenar el formulario sobre el internet, puede comunicarse con nuestra oficina para una copia impresa de la encuesta.



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 ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

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 الإستئناف 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.