

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0502

Reversed
Request to Reopen Allowed – Merits Hearing Required

PROCEDURAL HISTORY: On February 8, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision # 125924). The employer filed a timely request for hearing. On March 6, 2019, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for March 21, 2019. On March 21, 2019, ALJ S. Lee conducted a hearing, at which claimant failed to appear, and on March 29, 2019 issued Order No. 19-UI-127322, concluding that claimant's discharge was for misconduct. On April 15, 2019, claimant filed a timely request to reopen the March 21st hearing. On April 22, 2019, OAH mailed notice of a hearing scheduled for May 6, 2019. On May 6, 2019, ALJ S. Lee conducted a hearing, and on May 14, 2019 issued Order No. 19-UI-129864, denying claimant's request to reopen. On June 2, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) OAH mailed notice of the March 21st hearing to claimant at his address of record. Claimant did not reside at his address of record because he was experiencing homelessness and resided in his vehicle. At all relevant times, claimant had also been experiencing gout so painful that he sometimes could not walk and was in and out of the hospital.

(2) Claimant's address of record was at a friend's residence; claimant's friend had the only key to his locked mailbox. Claimant's friend notified claimant when he received mail for claimant, and brought the mail to claimant. Claimant's friend went to Hawaii with his family for a few weeks. He did not tell claimant when he was going on vacation. Claimant's friend did not think of claimant's mail before he left on vacation. Claimant did not receive the notice of hearing prior to the hearing because his friend was on vacation when it arrived and did not give it to him in time for the hearing.

CONCLUSIONS AND REASONS: Claimant's request to reopen is allowed.

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-129864 concluded that claimant did not have good cause to reopen the hearing because it was claimant's responsibility to ensure that he had access to his mail, and claimant failed to ensure he had access to mail delivered to his friend's address while his friend was on vacation. Order No. 19-UI-129864 at 3. In explaining the basis for denying claimant's reopen request, the ALJ stated during the hearing, "I'm certain that if you had asked your friend would have let you borrow the [mailbox] key" so claimant could check for mail despite his friend being on vacation. Audio recording at ~ 34:20-34:35. Order No. 19-UI-129864 concluded that because ensuring access to his mail was within claimant's reasonable control, he did not have good cause to reopen the hearing. The record does not support that conclusion.

As a preliminary matter, there is no evidence in this record establishing that claimant's friend would have given him the mailbox key if claimant had requested it, much less establishing that it was "certain" the friend would do so. The record does not show that claimant had a way of ensuring access to his mail while his friend was on vacation short of changing his address of record with the Department. Given that claimant was experiencing homelessness and residing in his vehicle at the time, the record does not establish that claimant had a different address to provide the Department.

Claimant was experiencing homelessness, residing in his vehicle, and in and out of the hospital for a gout condition so painful he sometimes could not walk. Around that time, the person who received his mail, notified him of his mail, and delivered his mail to him went on vacation without telling claimant when he was going, inadvertently temporarily depriving claimant of access to his mail. Under those circumstances, it was beyond claimant's reasonable control to obtain control of his mail, receive the notice of hearing prior to the hearing, or appear at the hearing. Claimant therefore had good cause to reopen the hearing. Claimant is entitled to a hearing on the merits of decision # 125924.

DECISION: Order No. 19-UI-129864 is set aside, as outlined above.

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

DATE of Service: June 12, 2019

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 19-UI-129864 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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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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