

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0533**

*Order No. 19-UI-130454 Affirmed – Disqualification*  
*Order No. 19-UI-130803 Reversed – Reopen to Reopen Allowed*

**PROCEDURAL HISTORY:** On March 21, 2019, the Oregon Employment Department (the Department) served notice of a decision concluding claimant was not available for work from February 24, 2019 through March 2, 2019, and until the reason for the denial ended, because of self-employment (decision # 152147). On April 4, 2019, the Oregon Employment Department (the Department) served notice of a decision concluding claimant voluntarily left a job at Bi-Mart Corporation without good cause (decision # 64605). On April 10, 2019, decision # 152147 became final without claimant having filed a timely request for hearing. On April 24, 2019, claimant filed a timely request for hearing on decision # 64605 and a late request for hearing on decision # 152147.

On May 1, 2019, the Office of Administrative Hearings (OAH) mailed two notices of two hearings, one regarding decision # 152147 scheduled for May 15, 2019 at 9:30 a.m., and the other on decision # 64605 scheduled for May 15, 2019 at 10:45 a.m. On May 15, 2019, claimant did not appear for the 9:30 a.m. hearing, and ALJ Snyder issued Order No. 19-UI-129944 dismissing claimant's request for hearing for failure to appear. On May 15, 2019 at 10:45 a.m., ALJ Snyder conducted a hearing on decision # 64605, at which claimant appeared, and on May 23, 2019 issued Order No. 19-UI-130454, affirming that decision.

On May 23, 2019, claimant filed a timely request to reopen the hearing regarding decision # 152147. ALJ Kangas reviewed claimant's request, and on May 30, 2019 issued Order No. 19-UI-130803, denying the request.

On June 7, 2019, claimant filed timely applications for review of Order No. 19-UI-130454 and Order No. 19-UI-130803 with the Employment Appeals Board (EAB). Pursuant to OAR 471-041-0095 (May 13, 2019), EAB consolidated its review of Orders No. 19-UI-130454 and 19-UI-130803. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2019-EAB-0533 and 2019-EAB-0534).

**Case No. 2019-UI-94931.** EAB reviewed the entire hearing record in Case No. 2019-UI-94931. On *de novo* review and pursuant to ORS 657.275(2), Order No. 19-UI-130454, which concluded that claimant voluntarily left a job at Bi-Mart without good cause and is disqualified from unemployment insurance benefits, is **adopted**.

**Case No. 2019-UI-94996.**

**FINDINGS OF FACT:** (1) OAH mailed notice of the May 15<sup>th</sup> 9:30 a.m. hearing to claimant at his address of record. On the same day, OAH mailed notice of another May 15<sup>th</sup> hearing, scheduled for 10:45 a.m., to claimant at his address of record. Claimant received notice of the 10:45 a.m. hearing and appeared at it.

(2) Notice of the 9:30 a.m. hearing was not returned to OAH by the U.S. Postal Service as undeliverable, but claimant did not appear at the 9:30 a.m. hearing. At all relevant times, claimant was not aware that a 9:30 a.m. hearing was scheduled, or that he had failed to appear at it.

**CONCLUSIONS AND REASONS:** Order No. 19-UI-130803, which concluded that claimant did not have good cause to reopen the May 15<sup>th</sup> 9:30 a.m. hearing, is reversed. Claimant is entitled to a hearing on whether his late request for hearing on decision # 152147 should be allowed and, if so, the merits of that decision.

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-130803 noted that OAH scheduled claimant to appear at two different hearings on May 15<sup>th</sup> and noted claimant’s confused insistence that he did in fact appear at the May 15<sup>th</sup> hearing, but stated that claimant “did not provide any information why he failed to appear for the hearing scheduled for 9:30 a.m.” Order No. 19-UI-130803 at 5. The Order concluded that because notice of the 9:30 a.m. hearing stated that there was a May 15<sup>th</sup> 9:30 a.m. hearing, and “[c]arefully reading the notice and following its instructions were within [claimant’s] reasonable control,” claimant did not show good cause to reopen the hearing and his request to reopen was denied. *Id.* The record does not support that outcome.

Although claimant provided no reasons for failing to appear at the February 11, 2016 hearing, the record demonstrates that claimant’s failure to appear more likely than not resulted from an excusable mistake. Claimant received two administrative decisions, each of which denied claimant unemployment benefits, and requested hearing on both. On May 1, 2019, OAH issued two notices of two hearings that, although different in some respects, look substantially similar. Neither notice of hearing explained that it did not apply to both administrative decisions, and neither notice explained that claimant was being scheduled for two hearings on the same day and was required to appear at both. Parties understandably expect to receive notice that a claim for unemployment benefits has been allowed or denied; they do not necessarily expect to receive multiple denials in separate documents. When a party receives more than

one administrative decision and requests a hearing, the party expects to receive one hearing on what is understood as a single issue – whether benefits will be allowed. *See accord* Employment Appeals Board Decision 2016-EAB-0317 (March 31, 2016); Employment Appeals Board Decision 10-AB-2774 (September 30, 2010). Claimant’s failure to appear at the May 15<sup>th</sup> 9:30 a.m. hearing likely resulted from his belief that he was scheduled for only one hearing at 10:45 a.m., which was an excusable mistake. *See, e.g.* Employment Appeals Board Decision 12-AB-1712 (July 16, 2012) (claimant’s failure to appear at a hearing, when he requested hearings on four different administrative decisions and received notice of four separate hearings was an excusable mistake). Claimant had good cause to miss the May 15<sup>th</sup> 9:30 a.m. hearing.

Claimant’s request to reopen the hearing therefore is allowed, and claimant is entitled to a hearing on whether his late request for hearing on decision # 152147 should be allowed and, if so, the merits of that decision.

**DECISION:** Order No. 19-UI-130454 is affirmed. Order No. 19-UI-130803 is set aside, as outlined above.

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

**DATE of Service: June 12, 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 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.

**Employment Appeals Board - 875 Union Street NE | Salem, OR 97311**  
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