

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0782

Order No. 19-UI-134446 Affirmed ~ Request to Reopen Denied
Order No. 19-UI-133773 Affirmed ~ Disqualification

PROCEDURAL HISTORY: On June 21, 2019, the Oregon Employment Department (the Department) served, by mail, notice of an administrative decision concluding that the employer discharged claimant, but that claimant was allowed benefits because the discharge was not for misconduct (decision # 84140). On July 2, 2019, the employer filed a timely request for hearing. On July 8, 2019, the Office of Administrative Hearings (OAH) served, by mail, notice of a hearing scheduled for July 19, 2019 at 9:30 a.m. On July 19th, ALJ Murdock conducted the hearing, at which claimant failed to appear, and on July 22, 2019 issued Order No. 19-UI-133773, concluding that claimant is disqualified from receiving benefits because her discharge by the employer was for misconduct. On July 25, 2019, claimant filed a timely request to reopen the hearing. ALJ Kangas reviewed claimant's request, and on August 2, 2019 issued Order No. 19-UI-134446, denying the request.

On August 7, 2019, claimant filed a timely application for review of Orders No. 19-UI-134446 and 19-UI-133773 with the Employment Appeals Board (EAB). Pursuant to OAR 471-041-0095 (May 13, 2019); EAB consolidated its review of Orders No. Orders No. 19-UI-134446 and 19-UI-133773. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2019-EAB-0738 and 2019-EAB-0782).

Claimant submitted written argument. However, claimant did not declare that they provided a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained information regarding claimant's failure to appear at the July 19th hearing and their discharge by the employer that was not part of the hearing record. However, claimant did not show that factors or circumstances beyond claimant's reasonable control prevented them from offering the information regarding their failure to appear at the hearing in their request to reopen the hearing. Nor, for the reasons discussed below, did claimant show that factors or circumstances beyond claimant's reasonable control prevented them from appearing at the June 19th hearing or from requesting a postponement of the hearing and offering the information regarding their discharge by the employer during the hearing. EAB considered only information received into the hearing record when reaching this decision. *See* ORS 657.275(2); OAR 471-041-0090 (May 13, 2019).

REQUEST TO REOPEN

FINDINGS OF FACT: (1) The July 8th notice of hearing stated that a hearing on decision # 84140 had been scheduled for July 19th at 9:30 a.m., and that the issue to be considered was whether claimant shall be disqualified from the receipt of benefits because of a separation, discharge, suspension or voluntary leaving from work. The notice further stated that at the time of the hearing, “you must call” a specified number and enter an access code followed by the “#” key. Exhibit 3 at 1 (emphasis in original).

(2) Along with the notice of hearing, OAH mailed claimant a notice of rights stating that an ALJ employed by OAH would conduct the hearing and make an independent decision, and that the parties listed on the notice of hearing (which included the employer) would be allowed to present evidence at the hearing. The notice further stated that the ALJ worked for OAH and was an independent decision maker, and that the ALJ was not bound by the Department’s decision on appeal and would make an independent decision based on the evidence presented during the hearing.

(3) When claimant received the notices of hearing and rights, she initially thought they were regarding an appeal by her. Claimant had a doctor appointment and a vocational rehabilitation appointment on July 19th, and did not think she needed to attend the hearing because she was receiving benefits.

(4) Claimant later received a letter informing her that the employer had requested the hearing. However, claimant chose not to participate in the hearing because she had the doctor and vocational rehabilitation appointments that day.

CONCLUSIONS AND REASONS: Claimant’s request to reopen the July 19, 2019 hearing on decision # 84140 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 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). Good cause does not include not understanding the implications of a notice when it is received. OAR 471-040-0040(2)(b)(B).

Claimant failed to appear at the July 19th hearing, in part, because she did not understand the implications of failing to appear from the notices of hearing and rights she received, which is not good cause for failing to appear. *See* under OAR 471-040-0040(2)(b)(B). Claimant also failed to appear at the hearing, in part, because she had doctor and vocational rehabilitation appointments that day. However, claimant failed to show that either of those appointments conflicted with the 9:30 a.m. hearing, or that it was beyond her reasonable control to reschedule those appointments if it did. Nor did claimant show that she asked OAH to postpone the hearing, much less that such a request was denied. Absent such showings, claimant failed to establish good cause for failing to appear at hearing.

Claimant’s request to reopen the July July 19, 2019 hearing decision # 84140 therefore is denied.

DISQUALIFICATION

EAB reviewed the entire June 19, 2019 hearing record. On *de novo* review and pursuant to ORS 657.275(2), Order 19-UI-133773, which concluded that claimant is disqualified from receiving benefits because the employer discharged her for misconduct, is **adopted**.

DECISION: Orders No. 19-UI-134446 and 19-UI-133773 are affirmed.

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

DATE of Service: August 28, 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 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 Empleo. Si no está de acuerdo con esta decisión, puede presentar una Aplicación 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 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.

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