

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0830

Reversed
Request to Reopen Granted

PROCEDURAL HISTORY: On May 9, 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 # 153825). On May 29, 2019, decision # 153825 became final without claimant having filed a request for hearing. On June 21, 2019, claimant filed a late request for hearing. On June 26, 2019, ALJ Kangas issued Order No. 19-UI-132336, dismissing claimant's request for hearing as late without a showing of good cause, subject to claimant's right to renew the request by responding to an appellant questionnaire by July 10, 2019. Claimant filed a timely response to the appellant questionnaire. On July 17, 2019, the Office of Administrative Hearings (OAH) cancelled Order No. 19-UI-132336, and on July 18, 2019 served, by mail, notice of a hearing scheduled for July 29, 2019 on whether claimant's late request for hearing on decision # 153825 should be allowed and, if so, the merits of that decision.

On July 29, 2019, ALJ Scott conducted a hearing at which the employer failed to appear, and on August 1, 2019 issued Order No. 19-UI-134385, allowing claimant's late request for hearing and reversing decision # 153825 by concluding that claimant voluntarily left work with good cause. On August 7, 2019, the employer filed a timely application for review of Order No. 19-UI-134385 with the Employment Appeals Board (EAB), which, pursuant to OAR 471-040-0040(6) (February 10, 2012), was treated as a timely request to reopen the July 29th hearing. ALJ Kangas considered the employer's request to reopen, and on August 19, 2019 issued Order No. 19-UI-135244, denying the request. On August 23, 2019, the employer filed an application for review of Order No. 19-UI-135244 with the Employment Appeals Board (EAB). EAB considered the entire hearing record and the parties' written arguments to the extent they were relevant to whether the employer's request to reopen the July 29th hearing should be allowed.

EVIDENTIARY MATTER: Order No. 19-UI-135244 denied the employer's request to reopen the July 29th hearing because the employer did not provide any information why it failed to appear at the hearing.¹ However, the employer provided such information in the application for review of Order No.

¹ Order No. 19-UI-135244 at 2-3.

19-UI-135244 it filed with EAB. EAB may consider additional evidence when the party offering it establishes that it is relevant and material to EAB's determination, and that factors or circumstances beyond the party's reasonable control prevented the party from offering the additional evidence into the hearing record. OAR 471-041-0090(1)(b). (May 13, 2019).

In its application for review, the employer explained that it failed to appear at the July 29th hearing because the July 18th notice of the hearing was delivered to the wrong address, and that the employer therefore was unaware of the hearing until after it received Order No. 19-UI-134385, which was not issued until August 1st. The employer further explained that it was not until August 21st, which was 14 days after the employer submitted its request to reopen the hearing and 2 days after the request was denied, that the employer learned the July 18th notice of hearing had been delivered to the wrong address.

The employer's additional evidence explaining its failure to appear at the July 29th hearing is relevant and material to EAB's determination of whether the employer's request to reopen the hearing should be allowed. The fact that the employer did not become aware of the additional evidence until 14 days after it submitted its request to reopen the hearing, and 2 days after the request was denied, was a factor or circumstance beyond the employer's reasonable control that prevented it from offering the additional evidence into the hearing record.

EAB therefore has considered the employer's additional evidence when reaching this decision under OAR 471-041-0090(1)(b). The additional evidence has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the exhibit(s) will remain in the record.

FINDINGS OF FACT: (1) The Department mailed the July 18th notice of the July 29th hearing on decision # 153825 to the employer at its address in a small office complex in West Linn, Oregon. EAB Exhibit 1. The office adjacent to the employer was previously occupied by another business that had moved almost a year earlier. EAB Exhibit 1. Unknown to the employer, the July 18th notice of the July 29th hearing was delivered to the adjacent office. EAB Exhibit 1.

(2) The employer failed to appear at the July 29th hearing because it was unaware that a hearing had been scheduled until it received Order No. 19-UI-134385, which was not issued until August 1st. EAB Exhibit 1.

CONCLUSIONS AND REASONS: The employer's request to reopen the July 29, 2019 hearing on decision # 153825 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).

Here, the employer failed to appear at the July 29th hearing due to factors beyond its reasonable control—the July 18th notice of hearing was delivered to the wrong address, and the employer therefore was unaware of the hearing until it received Order No. 19-UI-134385, which was not issued until August 1st. The employer therefore established good cause for failing to appear at the hearing.

The employer's request to reopen the July 29, 2019 hearing on decision # 153825 therefore is allowed.

DECISION: Order No. 19-UI-135244 is set aside, as outlined above.

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

DATE of Service: September 17, 2019

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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 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 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 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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