

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0858

Reversed
Request to Reopen July 15th Hearing Allowed
Hearing on Request to Reopen May 29th Hearing Required

PROCEDURAL HISTORY: On May 6, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit work without good cause and was disqualified from benefits effective March 24, 2019 (decision # 155550). Claimant filed a timely request for hearing. On May 16, 2019, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for May 29, 2019. On May 29, 2019, ALJ Janzen conducted a hearing at which the employer failed to appear, and on May 30, 2019 issued Order No. 19-UI-130798 concluding that claimant voluntarily left work with good cause. On June 18, 2019, the employer filed a timely request to reopen the May 29th hearing. On July 3, 2019, OAH mailed notice of a hearing scheduled for July 15, 2019, at which time the employer again failed to appear. On July 15, 2019, ALJ S. Lee issued Order No. 19-UI-133336, dismissing the employer's request to reopen for failure to appear. On July 25, 2019, the employer filed a timely request to reopen the July 15th hearing. On August 5, 2019, OAH mailed notice of a hearing scheduled for August 16, 2019. On August 16, 2019, ALJ Janzen conducted a hearing at which claimant failed to appear, and on August 20, 2019 issued Order No. 19-UI-135317, denying the employer's request to reopen the July 15th hearing. On September 9, 2019, the employer filed an application for review of Order No. 19-UI-135317 with the Employment Appeals Board (EAB).

EAB considered the employer's written argument to the extent it was based upon the evidence in the hearing record.

FINDINGS OF FACT: (1) OAH mailed notice of the July 15th hearing to the employer at its address of record with the Department. Mail sent to that address is received by the employer's representative's third party mail processing vendor.

(2) On Friday, July 12, 2019, the third party mail processing vendor received the notice of hearing in the mail. The vendor then undertook a verification process to ensure that the notice of hearing was uploaded to the correct case in the representative's system, then uploaded the notice.

(3) The employer's representative's business is closed on Saturdays and Sundays. The employer's representative did not receive the notice on Friday, Saturday, or Sunday.

(4) On Monday, July 15, 2019, the ALJ conducted a hearing on the merits of decision # 155550 at 8:15 a.m. At that point in time, the employer's representative had not yet received notice of the hearing, was unable to notify the employer that the hearing was scheduled, and the employer did not appear at the hearing.

CONCLUSIONS AND REASONS: The employer's request to reopen the July 15th hearing is allowed. The employer is entitled to a hearing on its request to reopen the May 29th hearing, and, if that request is allowed, on the merits of decision # 155550.

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-135317 concluded that the employer did not have good cause to reopen the hearing, reasoning that the employer's representative "imposed its own internal obstacle through its mail agent, which prevented its unemployment hearing consultant from receiving the notice and addressing the notice that same day. Those obstacles that prevented [the employer's representative] from addressing the notice of hearing in a timely manner were within [the employer's representative's] control." Order No. 19-UI-135317 at 3. The order concluded that the employer therefore did not miss the hearing on July 15th due to factors beyond its reasonable control or an excusable mistake, and did not have good cause to reopen the hearing.

The order holds parties to an unreasonably high standard.¹ There is nothing in law, rule, or precedent suggesting that either claimants or businesses must monitor their mail 24/7, or face the risk of forfeiting their right to contest potentially adverse agency action if notice of such action is received on the weekend or after hours. Nor is it reasonable to expect that any party do more than exercise ordinary due diligence in the course of its normal operations.

As a practical matter, the employer's representative in this case had less than one business day between receiving notice of the hearing and the date of the hearing. The mail processes described at the hearing appear to be reasonably designed to protect employers' and claimants' confidential information and ensure that mail reaches individual businesses' agents without causing undue delay. It was not reasonably feasible for the employer's representative to receive the notice, access the records, contact the hearing representative, contact the employer to secure witness participation, and arrange to appear at the hearing within such a short timeframe. The notice of hearing duly directed to the employer's address of record did not arrive in time for this employer, or any reasonable party experiencing similar circumstances, to participate in the July 15th 8:15 a.m. hearing, and the employer therefore established good cause to reopen the hearing.

¹ See also Employment Appeals Board Decision 2019-EAB-0730 (September 11, 2019) (so stating).

The order under review stated, “while [the employer’s representative’s] employees do not work weekends, a claimant who received notice of a hearing more than two days before the hearing and did not address it because they did not work on weekends, would not – under most circumstances – be found to have good cause.” Order No. 19-UI-135317 at 3. The comparison is not helpful. Regardless whether the circumstances in this case had been described by a claimant or employer, the outcome would have been the same. A claimant might experience similar circumstances, and show good cause, if, for example: the notice of hearing was sent to a P.O. Box that claimant checked four times a week but did not check until Monday morning at 8:30 a.m.; if the notice of hearing was sent to a claimant’s attorney’s business Friday afternoon, processed, and was not seen by the claimant’s representative until after 8:15 Monday morning; if claimant was out of town for the weekend and did not have access to his mail for a couple days; or if claimant did not receive the notice until after business hours Friday afternoon and had a conflicting interview or medical appointment Monday morning. Nothing in this decision is intended or should be read to impose a different standard for claimants and employers requesting reopening.

The employer’s request to reopen the July 15th hearing is allowed. The employer is entitled to a hearing on its request to reopen the May 29th hearing, and, if that request is allowed, on the merits of decision # 155550.

DECISION: Order No. 19-UI-135317 is set aside, as outlined above.

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

DATE of Service: September 30, 2019

NOTE: The failure of any party to appear at the next reopen hearing will not reinstate Order No. 19-UI-135317 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 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

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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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