

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0902**

*Reversed*  
*Request to Reopen Allowed*  
*Merits Hearing Required*

**PROCEDURAL HISTORY:** On July 17, 2019, the Oregon Employment Department (the Department) mailed notice of an administrative decision concluding that the employer discharged claimant for misconduct, and that he was disqualified from benefits effective June 23, 2019 (decision # 71212). Claimant filed a timely request for hearing. On July 24, 2019, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for August 6, 2019 at 8:15 a.m., at which time claimant failed to appear. On August 6, 2019, ALJ Murray-Roberts issued Order No. 19-UI-134545, dismissing claimant's request for hearing for failure to appear. On August 20, 2019, claimant filed a timely request to reopen the August 6<sup>th</sup> hearing. On August 28, 2019, OAH mailed notice of a hearing scheduled for September 10, 2019. On September 10, 2019, ALJ Murray-Roberts conducted a hearing, and on September 12, 2019 issued Order No. 19-UI-136382, denying claimant's request to reopen. On September 19, 2019, claimant filed a timely application for review with the Employment Appeals Board (EAB).

EAB considered claimant's argument when reaching this decision.

**FINDINGS OF FACT:** (1) At all relevant times, claimant experienced symptoms of attention deficit/hyperactivity disorder (ADHD). Typical symptoms of ADHD include inattention, such as failing "to give close attention to details or makes careless mistakes," not "follow[ing] through on instructions," having "trouble organizing tasks and activities," and being "forgetful in daily activities."<sup>1</sup>

(2) Claimant was diagnosed with ADHD in approximately 2009. He received monthly medical treatment for his condition, and took a prescribed medication to treat his symptoms.

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<sup>1</sup> EAB has taken notice of the typical symptoms of ADHD, which are generally cognizable. OAR 471-041-0090(1) (May 13, 2019). A copy of the information is available to the parties at <https://www.cdc.gov/ncbddd/adhd/diagnosis.html>. Any party that objects to our taking notice of this information 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 noticed fact will remain in the record.

(3) Around July 26, 2019, claimant received notice of the hearing scheduled for August 6, 2019. Around the same date, claimant also was notified that his close friend had unexpectedly passed away.

(4) Claimant was under a lot of stress because he was unemployed, had recently purchased a home, needed to prepare for his unemployment hearing, was upset about his friend's passing, and had responsibility for arranging a celebration of life for his recently passed friend. Stress aggravated claimant's symptoms. Claimant felt that his ADHD was "acting up," he felt "a little bit all over the place," and "fairly out of control." Audio recording at 16:30-17:00.

(5) Claimant nevertheless planned to attend the hearing on the date scheduled. He took steps to try to ensure that he could attend despite his ADHD symptoms being "fairly out of control" at the time, including writing the date of the hearing down on his calendar. In the past writing things down had helped claimant take care of his business despite his ADHD symptoms. Claimant inadvertently wrote down the date as August 8, 2019, rather than writing the actual August 6<sup>th</sup> hearing date.

(6) On August 6, 2019, claimant traveled to Washington to finish arranging his friend's celebration of life and to attend his friend's funeral. Claimant brought the calendar upon which he had noted the date of the hearing, and the notice of hearing, because he still intended to participate in what he thought was the August 8<sup>th</sup> hearing. On August 6<sup>th</sup>, while working on the celebration of life, claimant reviewed the notice of hearing again and realized that the hearing had occurred that morning, and that he had missed it. Claimant filed a timely request to reopen the August 6<sup>th</sup> 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).

The order under review concluded that claimant did not have good cause to reopen the August 6<sup>th</sup> hearing because claimant should have worn his glasses when writing the hearing down on his calendar, should have put the hearing date and reminders to double-check the hearing date into his cell phone, or even that he should have asked OAH to reschedule the hearing, any one of which might have allowed him to attend the hearing despite experiencing at all relevant times ADHD symptoms that he described as "fairly out of control." Order No. 19-UI-136382 at 3-4. The record does not support the order's conclusion that claimant did not have good cause.

Despite experiencing a great deal of stress and an associated increase in his ADHD symptoms, claimant made significant efforts toward attending the hearing, including identifying the date and time, writing it on his calendar, carefully reviewing the rules about participating in the hearing that were included in the notice of hearing, preparing for the hearing, taking his calendar and the notice of hearing with him on a trip to his friend's funeral, and planning to attend the hearing by telephone the day before his friend's funeral. Claimant was unable to attend the hearing on its scheduled date and time because, notwithstanding those efforts, his ADHD was "acting up" at all relevant times, causing him to feel "a little bit all over the place" and "fairly out of control."

The term “excusable mistake,” as customarily applied by OAH and EAB in cases involving requests to reopen and late requests for hearing, includes the inability to follow directions despite substantial efforts to comply. In this case, claimant made substantial efforts to follow directions contained on the notice of hearing about the date and time of the hearing, but it is more likely than not that his mental state and the ADHD symptoms he was experiencing left him unable to do so. Claimant’s failure to attend the August 6<sup>th</sup> hearing was therefore the result of an excusable mistake.

Claimant has shown good cause to reopen the August 6<sup>th</sup> hearing. He therefore is entitled to a hearing on the merits of decision # 71212.

**DECISION:** Order No. 19-UI-136382 is set aside, as outlined above.

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

**DATE of Service: October 8, 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 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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