

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0996

Reversed
Request to Reopen Granted
Merits Hearing Required

PROCEDURAL HISTORY AND FINDINGS OF FACT: On August 27, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct, and that claimant therefore was disqualified from receiving benefits (decision # 81717). On August 29, 2019, the Department served notice of an administrative decision, based in part on decision # 81717, concluding that claimant willfully misrepresented the nature of his work separation from the employer to obtain benefits, and therefore was disqualified for 4 weeks of future benefits (decision # 193755). Claimant filed a timely request for hearing on both decisions.

On September 12, 2019, the Office of Administrative Hearings (OAH) served notice of a hearing on decision # 81717 scheduled for September 24, 2019 at 9:30 a.m., and notice of a hearing on decision # 193755 scheduled for September 24th at 10:45 a.m. However, claimant mistakenly believed there would be one hearing on September 24th, at 9:30 a.m., on whether he was disqualified from receiving benefits based on issues relating to his work separation from the employer. Thus, on September 24th, claimant appeared at the 9:30 a.m. hearing on decision # 81717, but failed to appear at the 10:45 a.m. hearing on decision # 193755.

On September 24th, ALJ Janzen conducted the hearing on decision # 81717 and issued Order No. 19-UI-137011 affirming that decision, and issued Order No. 19-UI-137012 dismissing claimant's request for hearing on decision # 193755 for failing to appear at the hearing on that decision. On September 28, 2019, claimant filed a timely request to reopen the hearing on decision # 193755.¹ ALJ Kangas considered claimant's request, and on October 8, 2019 issued Order No. 19-UI-137708, denying the request. On October 16, 2019, claimant filed an application for review of Order No. 19-UI-137708 with the Employment Appeals Board (EAB).

¹ On September 28th, claimant also filed a timely application for review of Order No. 19-UI-137011 with the Employment Appeals Board (EAB). On November 1, 2019, EAB issued EAB Decision 2019-EAB-0928, affirming Order No. 19-UI-137011.

CONCLUSIONS AND REASONS: Claimant's request to reopen the hearing on decision # 193755 is granted. A hearing on the merits of that decision is required.

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).

In his request to reopen the hearing on decision # 193755, claimant stated, "I appeared in the hearing[.] Denied for being on time to work unjustable [sic] cause of termination." Exhibit 5. Order No. 19-UI-137708 determined that claimant was contending that he appeared at the hearing, but that ALJ Janzen provided documentation that claimant had not appeared within 10 minutes of the scheduled start time, and that ALJ Janzen's notes were consistent with OAH's conference log, which document that claimant did not call in for the hearing.² Order No. 19-UI-137708 therefore found that although claimant appeared for the 9:30 a.m. hearing on decision # 81717, he failed to appear at the 10:45 a.m. hearing on decision # 193755.³ Order No. 19-UI-137708 then dismissed claimant's request to reopen the hearing on decision # 193755, reasoning that because claimant did not provide any information that he was prevented from timely calling in for the hearing, he had failed to show that an excusable mistake or factors beyond his reasonable control caused him to miss the hearing, so no good cause had been shown.⁴

However, we infer from claimant's request to reopen the 10:45 a.m. hearing on decision # 193755 that he missed the hearing because he was unaware of it, and that he was unaware of it because he expected only one hearing on whether he was disqualified from receiving benefits based on issues relating to his work separation from the employer. Because the overlap of parties and issues involved in decisions # 81717 and 193755 was substantial, claimant's expectation that there would be only one hearing was reasonable.

Since 2010, we have repeatedly held that there is good cause to reopen when claimants miss a hearing because they reasonably expected only one. *See* Appeals Board Decision 10-AB-2774, September 30, 2010 (expected only one hearing); Appeals Board Decision 10-AB-3023, October 22, 2010 (expected only one hearing); Appeals Board Decision 10-AB-3302, November 10, 2010 (viewed cases as joined); Appeals Board Decision 10-AB-3607, November 24, 2010 (expected only one hearing); Appeals Board Decision 11-AB-1289, April 18, 2011 (expected one hearing); Appeals Board Decision 11-AB-1479, May 5, 2011 (expected one hearing); Appeals Board Decisions 11-AB-1518 and 11-AB-1519, May 31, 2011 (expected only one hearing); Appeals Board Decision 11-AB-1590, June 1, 2011 (expected only one hearing); Appeals Board Decisions 11-AB-1632 and 11-AB-1722, June 2, 2011 (expected only one hearing); Appeals Board Decision 12-AB-0918, April 13, 2012 (expected one hearing); Appeals Board Decision 12-AB-0882, April 9, 2012 (expected one hearing); Appeals Board Decision 12-AB-0432, March 12, 2012 (expected one hearing); Appeals Board Decision 12-AB-0039, January 17, 2012 (expected one hearing); Appeals Board Decision 12-AB-0018, January 12, 2012 (expected one hearing); Appeals Board Decision 11-AB-2637, September 21, 2011 (expected one hearing); Appeals Board

² Order No. 19-UI-137708 at 2.

³ Order No. 19-UI-137708 at 2.

⁴ Order No. 19-UI-137708 at 2-3.

Decision 12-AB-1242, May 1, 2012 (read notices carefully, and still expected only one hearing); Appeals Board Decision 12-AB-1391, May 23, 2012 (expected only one hearing); Appeals Board Decision 12-AB-1257, May 31, 2012 (expected hearing on merits would include overpayment issue); Appeals Board Decision 12-AB-1581, June 7, 2012 (expected one hearing); Appeals Board Decision 12-AB-1590, June 8, 2012 (expected one hearing); Appeals Board Decision, 12-AB-1712, July 16, 2012 (failure to appear when one hearing expected an excusable mistake); Appeals Board Decision 12-AB-1799, July 23, 2012 (expected only one hearing); Appeals Board Decision 12-AB-1961, July 23, 2012 (expected only one hearing); Appeals Board Decision 12-AB-2184, August 21, 2012 (expected only one hearing); Appeals Board Decision 12-AB-2256, August 28, 2012 (expected one hearing); Appeals Board Decision 12-AB-2359, September 13, 2012 (expected one hearing); Appeals Board Decision 12-AB-2414, September 25, 2012 (expected one hearing).

Accordingly, claimant's failure to appear at the hearing on decision # 193755 was an excusable mistake, and therefore good cause for failing to appear. Claimant's request to reopen the hearing on decision # 193755 therefore is granted. A hearing on the merits of that decision is required.

DECISION: Order No. 19-UI-137708 is set aside.

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

DATE of Service: November 20, 2019

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 19-UI-137708 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 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

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 الاستئناف 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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