

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-1116

Affirmed
Request to Reopen Denied

PROCEDURAL HISTORY: On September 19, 2019, the Oregon Employment Department (the Department) served, by mail to the parties' addresses of record with the Department, notice of an administrative decision that denied claimant benefits, concluding the employer discharged claimant for misconduct (decision # 143930). On September 23, 2019, claimant filed a timely request for hearing. On September 26, 2019, the Office of Administrative Hearings (OAH) served, by mail to the parties' addresses of record, notice of a hearing scheduled for October 10, 2019 at 10:45 a.m. On October 10th, claimant failed to appear at the hearing, and ALJ Snyder issued Order No. 19-UI-137893, dismissing claimant's request for hearing for failure to appear. On October 14, 2019, claimant filed a timely request to reopen the hearing. On October 31, 2019, ALJ Frank conducted a hearing on whether claimant's request to reopen the October 10th hearing should be granted, and on November 8, 2019 issued Order No. 19-UI-139485, denying the request. On November 22, 2019, claimant filed a timely application for review of Order No. 19-UI-139485 with the Employment Appeals Board (EAB).

Claimant submitted written argument with his application for review, and another timely written argument on December 17, 2019. In those arguments, claimant asserted that the hearing proceedings were unfair or the ALJ was biased. EAB reviewed the hearing record in its entirety, which shows that the ALJ inquired fully into the matter at issue, which was whether claimant's request to reopen the October 10th hearing should be allowed, and gave all parties reasonable opportunity for a fair hearing on that issue as required by ORS 657.270(3) and (4) and OAR 471-040-0025(1) (August 1, 2004). EAB considered claimant's remaining arguments to the extent they were relevant to whether his request to reopen the October 10th hearing should have been allowed, and based on information received into evidence at the October 31st hearing on that issue. *See* ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019).

Claimant submitted another written argument on December 19, 2019. Because that argument was not received by EAB within the time period allowed under OAR 471-041-0080(1) (May 13, 2019), it was not considered by EAB when reaching this decision. OAR 471-041-0080(2)(a).

FINDINGS OF FACT: (1) On September 10, 2019, claimant moved from his address of record with the Department, but continued to have his mail delivered to that address and forwarded to him. Claimant therefore personally received decision # 143930, which was mailed to his address of record on September 19th, in time to file a timely request for hearing on September 23rd.

(2) Claimant personally received the notice of the October 10th hearing, which also was mailed to his address of record, on or about October 1st. Audio Record at 13:00. The notice of hearing stated that, “At the time of hearing, you must call 1-877-622-4041. Using the telephone keypad, enter the access code **880037** followed by the ‘#’ key.” Exhibit 1 at 1. The notice of hearing also stated that, “**If you have questions prior to your hearing, call 1-800-311-3394 (or local Salem are 503-947-1515).**” Exhibit 1 at 1.

(3) Claimant failed to appear at the October 10th hearing because he mistakenly believed the ALJ would call him at the time of the hearing.

CONCLUSIONS AND REASONS: Claimant’s request to reopen the October 10th hearing on decision # 143930 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).

Claimant failed to appear at the October 10th hearing because he mistakenly believed the ALJ would call him at the time of the hearing. At the October 31st hearing, claimant testified that on or about September 30th he called OAH or the Department regarding the status of his request for hearing, and was told the date and time at which the hearing had been scheduled, and that the ALJ would call him at that time. Audio Record at 16:00 to 18:45. However, OAH records fail to show that claimant called OAH on or around September 30th. Audio Record at 19:30 to 22:00. Nor do Department records available to EAB show that claimant called the Department on or around September 30th.¹

Regardless, claimant testified that he received the September 26th notice of the October 10th hearing on or about October 1st. Audio Record at 13:00. Claimant failed to show that factors beyond his reasonable control prevented him from reading and understanding from the notice of hearing that he had to call into the hearing, or calling OAH for clarification if he had received conflicting information on September 30th. Nor was it reasonable, or therefore an excusable mistake, for claimant to rely on any such information instead of reading the notice of hearing, and following its instructions or calling OAH for clarification.

Claimant failed to establish good cause for failing to appear the October 10th hearing on decision # 143930, and his request to reopen the hearing is denied.

¹ EAB has taken notice of this fact, which is contained in Department records OAR 471-041-0090(1) (May 13, 2019). 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.

DECISION: Order No. 19-UI-139485 is affirmed.

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

DATE of Service: December 20, 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 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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