

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-1130**

*Reversed*  
*Late Request for Hearing Allowed*  
*Merits Hearing Required*

**PROCEDURAL HISTORY:** On August 28, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not able or available to work and denying benefits from August 4, 2019 through August 17, 2019, and until the reason for the denial ended (decision # 94417). On September 9, 2019, claimant filed a timely request for hearing. On September 13, 2019, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for September 26, 2019 at 1:30 p.m., at which time claimant failed to appear for the hearing. On September 27, 2019, ALJ Jarry issued Order No. 19-UI-137182, 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 22, 2019, OAH mailed notice of a hearing scheduled for November 5, 2019 at 3:30 p.m. On November 5, 2019, ALJ Frank conducted a hearing, at which claimant appeared, and on November 13, 2019 issued Order No. 19-UI-199642, denying claimant's request to reopen. On December 2, 2019, claimant filed a timely application for review with the Employment Appeals Board (EAB).

EAB considered claimant's argument when reaching this decision to the extent it was relevant and based upon evidence in the record.

**FINDINGS OF FACT:** (1) At all times relevant hereto, claimant has experienced chronic alcoholism.

(2) Around the time claimant filed a request for hearing she was in recovery. She was attending to her personal business, looking for work, and preparing herself to begin working should she receive a job offer. After filing her request for hearing, claimant watched the mail for a short period of time to see if she received mail pertaining to her request. She did not receive the notice of hearing during the time she watched the mail.

(3) Sometime shortly after September 13, 2019, the notice of hearing arrived at claimant's address of record. Claimant did not look at the notice of hearing, and was not aware that a hearing had been scheduled.

(4) Between September 20, 2019 and October 1, 2019, claimant had a relapse and engaged in heavy use of alcohol. She was away from her regular residence, staying at a friend's house. On September 26, 2019, the day the hearing in this matter was scheduled, claimant went to the emergency room with an alcoholism-related emergency.

(5) On October 1, 2019, claimant returned to her regular address and went through the mail. She discovered the notice of hearing, read it, and realized she had missed the hearing. On October 14, 2019, claimant filed a timely request to reopen the September 26, 2019 hearing.

**CONCLUSIONS AND REASONS:** Claimant's request to reopen is allowed. Claimant is entitled to a hearing on the merits of decision # 94417.

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 denied claimant's request to reopen, concluding that although claimant's September 26<sup>th</sup> failure to appear at the hearing due to hospitalization might have been beyond her reasonable control, claimant did not know about the hearing anyway because she had not read the notice of hearing OAH mailed to her.<sup>1</sup> The order stated,

Claimant stipulated that, had she known about the matter, she would not have simply failed to appear and instead, would have contacted the OAH to request a postponement. Claimant's testimony also suggests that it was within her reasonable control to read the hearing notice and gain an awareness of the matter: she described her alcohol use and its effects as intermittent and speculated that she had failed to contact the OAH to inquire about her hearing's status out of simple procrastination.<sup>2</sup>

The order under review accurately synopsis claimant's testimony, and there is no dispute that claimant could, and arguably should, have read the notice of hearing when it was received at her address of record. Beyond that, however, claimant's testimony regarding what she would or would not have done during an alcoholic relapse is not logical or plausible. For example, even if claimant had known about the September 26<sup>th</sup> hearing, it is implausible that claimant would have known that she was going to be incapacitated by alcohol and/or hospitalization prior to September 26<sup>th</sup> such that she realistically could have called OAH prior to the September 26<sup>th</sup> hearing to request a postponement. Claimant's speculation that she might have failed to contact OAH about her request for hearing at any point in time after requesting the hearing is just that, speculative, and therefore is insufficient evidence upon which to decide that attending the September 26<sup>th</sup> hearing was within claimant's reasonable control.

The uncontested evidence in this record is that claimant was incapable of attending the September 26<sup>th</sup> hearing, either because she was incapacitated by the effects of her chronic alcoholism or incapacitated

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<sup>1</sup> Order No. 19-UI-139642 at 3.

<sup>2</sup> Order No. 19-UI-139642 at 3-4.

by her hospitalization. Either way, it was beyond claimant's reasonable control to either attend a hearing on September 26<sup>th</sup> or notify OAH on September 26<sup>th</sup> that she was unable to attend the hearing and request that it be postponed. Because attending the hearing was beyond claimant's reasonable control, she has shown good cause to reopen the hearing. Claimant's request to reopen is, therefore, allowed.

**DECISION:** Order No. 19-UI-139642 is set aside, as outlined above, and a merits hearing must be scheduled.

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

**DATE of Service: December 9, 2019**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 19-UI-139642 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**

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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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