

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-1188**

*Orders No. 19-UI-141509 and 19-UI-139923 Vacated*  
*Order No. 19-UI-135699 Reversed & Remanded*

**PROCEDURAL HISTORY AND FINDINGS OF FACT:** On July 19, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision assessing claimant a \$1,248 overpayment, \$187.20 monetary penalty, and eight penalty weeks (decision # 194638). On July 30, 2019, claimant filed a timely request for hearing. On August 19, 2019, ALJ Snyder conducted a hearing at which the employer did not appear. Claimant and the Department appeared for the hearing and provided evidence. On August 27, 2019, ALJ Snyder issued Order No. 19-UI-135699, affirming the Department's decision. On September 12, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

On October 18, 2019, EAB issued EAB Decision 2019-EAB-0884, reversing Order No. 19-UI-135699 and remanding it to the Office of Administrative Hearings (OAH) for further development of the record. On October 21, 2019, OAH mailed notice of a remand hearing scheduled for November 4, 2019. On November 4, 2019, OAH re-mailed notice of a remand hearing scheduled for November 18, 2019. On November 18, 2019, ALJ Snyder conducted a hearing at which claimant failed to appear and served Order No. 19-UI-139923, dismissing claimant's request for hearing because claimant failed to appear for the November 18 remand hearing and concluding that Order No. 19-UI-135699, affirming the Department's decision # 194638, remained undisturbed.

On December 10, 2019, claimant filed a late application for review with the Employment Appeals Board (EAB) that was treated as a late request to reopen the November 18, 2019 remand hearing. ALJ Kangas reviewed claimant's request, and on December 19, 2019, issued Order No. 19-UI-141509, denying the request and leaving Order No. 19-UI-135699 undisturbed. On December 23, 2019, claimant filed a timely application for review of Order No. 19-UI-141509 with EAB.

Claimant submitted written argument on his application for review. EAB did not consider claimant's written argument when reaching this decision because he did not include a statement declaring that he provided a copy of his argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019).

**CONCLUSIONS AND REASONS:** Orders No. 19-UI-139923 and 19-UI-141509 are vacated. Order No. 19-UI-135699 is set aside, and this matter remanded to OAH for further proceedings.

**Orders No. 19-UI-139923 and 19-UI-141509.** Order No. 19-UI-139923 dismissed claimant's request for hearing for failing to appear at the November 18, 2019 remand hearing. There is no dispute that claimant failed to appear at that hearing. Nor is there any dispute that ORS 657.270(7)(a)(C) provides that a request for hearing may be dismissed if "[t]he requesting party fails to appear at the hearing," and that OAR 471-040-0035 states that a request for hearing may be dismissed if "[t]he appellant fails to appear at the hearing at the time and place stated in the notice of hearing." However, those provisions do not control the outcome of this case.

Although claimant filed the original request for hearing in this case, and dismissal of his request for hearing would have been appropriate had he failed to appear for the original hearing, he was *not* the requesting party for the remand hearing. Rather, the remand hearing was ordered by EAB to correct deficiencies in the record of the original hearing. At all relevant times, claimant, a party to the case, had already made an appearance in the hearing and provided evidence contesting decision # 194638. There is no known law or rule providing that an individual's request for hearing may or should be dismissed if, after making an appearance in a case, the individual later fails to attend additional proceedings that they did not request. It was, therefore, error to dismiss claimant's July 30<sup>th</sup> request for hearing for failing to appear at the November 18<sup>th</sup> remand hearing. Order No. 19-UI-139923 is therefore vacated.

After receiving Order No. 19-UI-139923, claimant filed an application for review that was treated as a request to reopen Order No. 19-UI-139923. An administrative law judge (ALJ) reviewed that request and issued Order No. 19-UI-141509, denying that request. Order No. 19-UI-141509 was factually and legally correct with respect to the reopen issue. However, because Order No. 19-UI-139923 should not have been issued, and claimant's request for hearing should not have been dismissed in the first place, claimant's failure to prove that his request to reopen the November 18<sup>th</sup> remand hearing should be allowed does not determine the outcome of this case. Rather, because Order No. 19-UI-139923 should not have been issued, and has been vacated, there was no reopen issue properly before the ALJ to decide. Order No. 19-UI-141509 is therefore vacated, as well.

**Order No. 19-UI-135699.** Orders No. 19-UI-139923 and 19-UI-141509 having been vacated, the matter remaining before EAB for review is Order No. 19-UI-135699, which EAB had set aside and remanded to OAH for further proceedings. Although claimant did not appear at the remand hearing, a witness for the Department did. Despite the appearance of a party to the case on remand, the ALJ did not ask the Department witness about the additional information requested in EAB Decision 2019-EAB-0884, or ask the Department if it had additional information to provide at the remand hearing. Audio Record at 13:31 to 13:45.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because the ALJ failed to ensure that the record of the remand hearing was fully developed, further development of the record remains necessary for a determination of whether claimant is liable for an overpayment and penalties. On remand, regardless whether or not claimant chooses to attend this remand hearing, the ALJ

should hold the hearing, inquire of the Department's witness and any other party witnesses that appear, and issue a decision based upon the totality of the evidence provided at both the original and remand hearings. If no witnesses appear at this remand hearing, the ALJ should then issue a decision based upon available evidence, including evidence provided at the original hearing.

This matter is reversed, and remanded to OAH for additional proceedings, specifically, to conduct the inquiry explained in EAB Decision 2019-EAB-0884. A copy of EAB Decision 2019-EAB-0884 is attached to this decision.

**DECISION:** Orders No. 19-UI-141509 and 19-UI-139923 are vacated. Order No. 19-UI-135699 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service: January 30, 2020**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 19-UI-135699 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 ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

**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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