

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0008

Reversed & Remanded

PROCEDURAL HISTORY: On October 28, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for committing a disqualifying act under the Department’s drug and alcohol adjudication policy (decision # 152035). Claimant filed a timely request for hearing. On November 5, 2019, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for November 18, 2019, mailing the employer’s notice to 15532 SW Pacific Hwy Ste C1B #513, Tigard, OR 97224. On November 12, 2019, the employer’s notice of hearing was returned to OAH in the mail as undeliverable. On November 18, 2019, ALJ Scott conducted a hearing at which the employer failed to appear, and on November 19, 2019, issued Order No. 19-UI-139960, concluding the employer discharged claimant not for misconduct. OAH mailed the employer’s copy of Order No. 19-UI-139960 to 15532 SW Pacific Hwy Ste C1B #513, Tigard, OR 97224. On December 9, 2019, Order No. 19-UI-141778 became final without the employer having filed a request to reopen the hearing. On December 11, 2019, the employer filed a late request to reopen the hearing. ALJ Kangas considered the employer’s request, and on December 26, 2019, issued Order No. 19-UI-141778, denying the request. On January 6, 2020, the employer filed a timely application for review with the Employment Appeals Board (EAB).

CONCLUSIONS AND REASONS: Order No. 19-UI-141778 is reversed, and this matter remanded for a hearing on whether the employer’s late request to reopen the November 18, 2019 hearing on decision # 152035 should be allowed, and, if allowed, whether claimant should be disqualified from receiving benefits based on a work separation from the employer.

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. The period within which a party may request reopening may be extended if the party requesting reopening as good cause for failing to request reopening within the time allowed, and acts within a reasonable time. OAR 471-040-0041(1) (February 10, 2012). “Good cause” exists when an action, delay, or failure to act arises from an excusable mistake or from factors beyond an applicant’s reasonable control. OAR 471-040-0041(2). “A reasonable time,” is seven days after the circumstances that prevented a timely filing ceased to exist. OAR 471-040-0041(3). The party requesting reopening shall set forth the reason(s) for filing a late request to reopen in

a written statement, which OAH shall consider in determining whether good cause exists for the late filing, and whether the party acted within a reasonable time. OAR 471-040-0041(4).

OAR 471-040-0041(2)(a)(A) provides that good cause includes “[f]ailure to receive a document because [OAH] mailed it to an incorrect address despite having the correct address[.]” OAR 471-040-0041(b)(A) provides that good cause does not include “[f]ailure to receive a document due to not notifying the [Department or OAH] of an updated address while the person . . . reasonably should know of a pending appeal.”

Order No. 19-UI-141778 denied the employer’s late request to reopen the November 18, 2019 hearing because the employer did not show good cause for filing its request late.¹ The order reasoned that the employer did not show good cause for filing its request to reopen late because the employer provided no information in its request about why it filed its reopen request late, and therefore did not show that an excusable mistake or factors beyond its reasonable control caused it to file its request late.² The order did not address if the employer showed good cause for failing to appear at the hearing.

Order No. 19-UI-141778 correctly concluded that the employer’s request to reopen did not include a statement explaining why it was late or why the employer failed to appear for the November 18 hearing. However, the employer asserted in its written argument to EAB that OAH incorrectly sent Order No. 19-UI-141778 to 7600 SW Beveland, rather than the correct address at that time, 7060 SW Beveland. The record also shows the notice of hearing OAH mailed to the employer on November 5, 2019 was returned to OAH as undeliverable on November 12, 2019. The employer also asserts in its written argument to EAB that the Department “keeps sending crucial paperwork to incorrect addresses for [the employer],” despite “several attempts to update it.” Employer’s Written Argument. A party may be denied due process if notice of the hearing and/or the right to appeal was not mailed to the absent party’s last known address as shown by the Department. Under the circumstances, the employer is entitled to a hearing on its late request to reopen the November 18 hearing, and if good cause is shown to reopen that hearing, a hearing on the merits of decision # 152035.

The parties should note that the principal issue for the remand hearing will be the employer’s late request to reopen the November 18 hearing. Only if the employer shows good cause to reopen the November 18 hearing would the employer then be entitled to a hearing on the merits of decision # 152035.

DECISION: Order No. 19-UI-141778 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 14, 2020

¹ Order No. 19-UI-141778 at 3.

² Order No. 19-UI-141778 at 3.

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 19-UI-141778 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 desisyon.

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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