

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0027-R

On Reconsideration
Order No. 20-UI-142332 is Reversed
Merits Hearing Required

PROCEDURAL HISTORY: On November 20, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and denied benefits beginning October 27, 2019 (decision # 140403). Claimant filed a timely request for hearing. On December 12, 2019, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for December 26, 2019. On December 26, 2019, claimant failed to appear at the hearing, and on December 27, 2019, ALJ Frank issued Order No. 19-UI-141799, dismissing claimant's request for hearing for failure to appear.

On January 2, 2020, claimant filed a timely application for review with the Employment Appeals Board (EAB) that, under OAR 471-040-0040(6) (February 10, 2012), was treated as a timely request to reopen the December 26, 2019 hearing. ALJ Kangas reviewed claimant's request, and on January 9, 2020, issued Order No. 20-UI-142332, denying the request and leaving Order No. 19-UI-141799 undisturbed. On January 14, 2020, claimant filed a timely application for review of Order No. 20-UI-142332 with EAB. On January 24, 2020, EAB issued EAB Decision 2020-EAB-0027, affirming Order No. 20-UI-142332.

Effective February 5, 2020, EAB reconsidered EAB Decision 2020-EAB-0027 on its own motion. *See* ORS 657.290(3).

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is a document claimant faxed to the Department on December 27, 2019 titled "Request to Reopen." The evidence has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 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 exhibit(s) will remain in the record.

FINDINGS OF FACT: (1) Claimant received notice of decision # 140403. He disagreed with that decision and filed a timely request for hearing.

(2) After requesting a hearing, claimant checked his mailbox daily to “make sure I receive notice of a hearing in timely manner, and to make sure I’m prepared for the hearing, when it is to be scheduled.” EAB Exhibit 1. Claimant checked his mailbox every day through December 23, 2019, and the notice of hearing was not delivered to him.

(3) Claimant did not check his mail on December 24th, December 25th, or December 26th due to the holiday. On December 26, 2019, claimant failed to attend the hearing because he was not aware of it.

(4) On December 27, 2019, claimant checked his mailbox and discovered the notice of hearing. The same day, claimant filed a timely request to reopen the December 26th hearing.

CONCLUSIONS AND REASONS: On Reconsideration, Order No. 20-UI-142332 is reversed. Claimant is entitled to a hearing on the merits of decision # 140403.

RECONSIDERATION: ORS 657.290(3) allows EAB, upon its own motion, to reconsider any previous EAB decision and issue a new decision to the extent necessary and appropriate for the correction of previous error of fact or law.

EAB Decision 2020-EAB-0027 adopted Order No. 20-UI-142332, which denied claimant’s January 3, 2020 request to reopen the December 26, 2019 hearing on decision # 140403 because claimant “did not provide any information why he failed to appear at the previously scheduled hearing.” Order No. 20-UI-142332 at 2. Unbeknownst to OAH or EAB, however, at the time OAH and EAB were considering claimant’s January 3rd request to reopen, claimant had already submitted a request to reopen on December 27th, in which he thoroughly explained why he failed to appear at the December 26th hearing. See EAB Exhibit 1. Order No. 20-UI-142332 and EAB Decision 2020-EAB-0027 were therefore based upon an error of fact.

Claimant’s request to reopen did, in fact, include a written statement explaining why he failed to appear at the December 26th hearing. He is entitled to have his written statement considered, and entitled to a new decision about whether or not his request to reopen should be allowed.

REQUEST TO REOPEN: 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 did not attend the December 26th hearing because, despite checking his mail every day through December 23rd, he did not receive notice of the hearing and therefore was not aware it had been scheduled. Given the circumstances as claimant described them, the notice of hearing in this case was likely delivered to his mailbox on December 24th, December 26th, or December 27th. If the notice of hearing was delivered to claimant’s mailbox on December 24th and December 26th, it likely would have been within claimant’s reasonable control to check his mailbox on those days. However, his failure to

check the mailbox on those days, on either side of a postal holiday, was more likely than not an excusable mistake, either because his actual notice of the hearing was inadequate to allow him to prepare to attend, or based upon his substantial efforts to ensure that he received notice of the hearing in time to attend it. If the notice of hearing was delivered to claimant's mailbox on December 27th, the day after the hearing, his failure to attend the hearing would have been beyond his reasonable control. Either way, claimant has established good cause to reopen the December 26th hearing.

DECISION: On reconsideration, Order No. 20-UI-142332 is set aside. Claimant is entitled to a hearing on the merits of decision # 140403.

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

DATE of Service: February 11, 2020

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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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