

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0189

Reversed & Remanded
Request to Reopen Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On November 14, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # 93821). Claimant filed a timely request for hearing. On December 2, 2019, the Office of Administrative Hearings (OAH) served, by mail, notice of a telephone hearing scheduled for December 13, 2019 at 9:30 a.m. On December 13, 2019, ALJ Scott conducted a hearing at which the employer failed to appear, and on December 18, 2019, issued Order No. 19-UI-141369, concluding the employer discharged claimant, but not for misconduct.

On December 26, 2019, the employer filed a timely request to reopen the hearing. On February 12, 2020, ALJ Scott conducted a hearing, and on February 13, 2020, issued Order No. 20-UI-144412, denying the employer's request to reopen the hearing, leaving Order No. 19-UI-141369 undisturbed. On March 2, 2020, the employer filed an application for review of Order No. 20-UI-144412 with the Employment Appeals Board (EAB).

The employer did not declare that they provided a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained information that was not part of the hearing record, largely irrelevant to the issue addressed, and did not show that factors or circumstances beyond the employer's reasonable control prevented them from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) The employer, a sole proprietorship, received the December 2, 2019 notice of hearing in the mail and the employer's owner planned to participate in the 9:30 a.m. hearing scheduled for December 13, 2019.

(2) On December 12 and 13, 2019, the owner was sick with a viral illness. On December 13, the owner

woke up with “horrible” symptoms. Audio Record at 11:30 to 11:45. His temperature had “skyrocketed,” his throat was swollen, and he was “lethargic” and “out of it.” Audio record at 15:45 to 16:20. He failed to call in to participate in the telephone hearing. Although he was conscious, he “never made a conscious decision not to attend [and] due to [his] virus [his] mind didn’t click there.” Audio Record at 12:25 to 12:40; 14:00 to 14:30. On that day, the owner was too ill to participate in the hearing or call in to request a postponement.

(3) Although the owner’s wife was an employee and aware the owner was ill on December 13, she did not know to handle administrative matters like hearings, and the owner was too sick to make arrangements for her to request a postponement on his behalf.

CONCLUSIONS AND REASONS: The employer’s motion to reopen the hearing on decision # 93821 is allowed. The employer is entitled to a hearing on the merits of that decision.

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).

Order No. 20-UI-144412 concluded that although the employer’s request to reopen was timely and the owner was too sick to personally participate in the hearing on December 13, 2019, the employer failed to show good cause for reopening the hearing because it was within the employer’s reasonable control to request a postponement of the hearing. Order No. 20-UI-144412 at 2, 5-6. The order reasoned that “it was simply not plausible that [the owner] was so sick that he could not recall that he had a hearing scheduled for that day or too sick to make arrangements for its postponement, either personally or through his wife.” The record supports the ALJ’s finding that the owner was too sick to personally participate in the December 13 hearing. However, viewed objectively, the order’s conclusion that it was “not plausible” that the owner was too sick to request a postponement himself or make alternate arrangements to do so is not supported by the record. The owner’s testimony that on December 13, 2019, his temperature had “skyrocketed,” his throat was swollen, he was “lethargic,” “out of it,” and “never made a conscious decision not to attend the hearing” due to his viral illness was not disputed. It is more likely that not that the employer’s illness prevented him from participating in the hearing, requesting a postponement, or asking that his wife request a postponement on his behalf. To any extent he should have done so anyway, the owner’s failure to request a postponement of the hearing or make alternative arrangements to do so was at worst an excusable mistake under OAR 471-040-0040(2).

The employer’s request to reopen the December 13, 2019 hearing on decision # 93821 is allowed. A hearing on the merits of decision # 93821 is therefore required.

DECISION: Order No. 20-UI-144412 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: March 24, 2020

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 20-UI-144412 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 ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄໍາຕັດສິນນີ້.

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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