

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0351

Reversed
Request to Reopen Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On February 3, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant, not for misconduct (decision # 93104). The employer filed a timely request for hearing. On March 5, 2020, the Office of Administrative Hearings (OAH) mailed notice of a telephone hearing scheduled for March 18, 2020 at 10:45 a.m. On March 18, 2020, ALJ Lee conducted a hearing at which claimant failed to appear, and on March 25, 2020, issued Order No. 20-UI-146893, concluding that the employer discharged claimant for misconduct.

On March 27, 2020, claimant filed a timely request to reopen the hearing. On April 20, 2020, ALJ Logan conducted a hearing, and on April 22, 2020, issued Order No. 20-UI-148502, denying claimant's request to reopen the hearing and leaving Order No. 20-UI-146893 undisturbed. On May 8, 2020, claimant filed an application for review of Order No. 20-UI-148502 with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) At all relevant times, claimant lived in Rogue River, Oregon, but maintained a post office box (P.O. Box) in Ashland, Oregon, which is the address she maintained on file with the Department. Prior to March 5, 2020, claimant made the 40-minute drive from Rogue River to Ashland at least once a week in order to check for mail.

(2) Between March 5, 2020, the date that OAH mailed the notice of hearing to claimant's Ashland P.O. Box, and March 18, 2020, the hearing date, claimant did not visit her Ashland P.O. Box to collect her

mail. During this time period, claimant did not feel comfortable leaving her Rogue River home because of the Governor's coronavirus-related quarantine orders and social distancing guidelines, as well as the Governor's guidance "not to leave your home unless it was a necessity". Audio Record at 12:52. Claimant had heard about the Governor's directives through television news coverage. Claimant had not been feeling well. Her mother, who was vulnerable to illness because she "had been through three different forms of cancer," had been staying with her. Claimant did not want to take the chance of going anywhere and potentially exposing herself or her mother to the coronavirus. Claimant had no reason to believe there were any issues with her unemployment insurance benefits during this time period because she had already received the Department's favorable administrative decision # 93104 and because she had been receiving unemployment insurance benefits as a result.

(3) On or about March 27, 2020, claimant called the Department to inquire why she had not received her unemployment benefits. She did not reach a Department employee so she left a message. On March 27, 2020, a Department employee returned claimant's call and informed her that she had missed the March 18, 2020 administrative hearing, which resulted in her disqualification from receiving benefits, and that it would be her responsibility request to reopen the hearing. Claimant submitted her request to reopen the hearing on the same day.

(4) On April 17, 2020, claimant travelled to her P.O. Box in Ashland in order to pick up a packet mailed to her for the April 20, 2020, hearing on her request to reopen. Claimant was willing to "take the chance of going to the post office" for this purpose because she was aware that the hearing on April 20, 2020, was going to occur. Audio Record at 14:24.

CONCLUSIONS AND REASONS: Claimant established good cause to reopen the hearing.

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).

In concluding that claimant had not shown good cause to reopen the hearing, the order under review found that the Department's February 3, 2020 administrative decision expressly informed both parties of their right to appeal the Department's decision. Thus, claimant was on notice that the employer might seek to appeal the decision, and, given this notice, her failure to check her Ashland P.O. Box between March 5, 2020 and March 18, 2020 was an error that was "attributable to claimant, and [did] not in these circumstances establish good cause to miss the hearing." Order No. 20-UI-148502 at 5. To the extent there was increasing concern surrounding the coronavirus pandemic during this period, including the increasingly restrictive nature of the Governor's executive orders, the order found that neither these concerns, nor the governmental restrictions that followed, prohibited the claimant from checking her mail and, thus, "did not create a circumstance beyond claimant's reasonable control" such that her request to reopen should be allowed. Order No. 20-UI-148502 at 5. Finally, the order under review reasoned that because claimant did not fear going to her P.O. Box to get mail related to her April 20, 2020 hearing (notwithstanding her concerns about the coronavirus), it followed that her failure to go to her P.O. Box from March 5-18, 2020, was not the result of an attempt to "avoid[] the virus itself." Order No. 20-UI-148502 at 5. Rather, the order found that claimant did not go to her P.O. Box from March 5-

18, 2020, because “she did not know ... that a notice of hearing was waiting for her,” but she should have known. Order No. 20-UI-148502 at 5. Based on these reasons, the order under review concluded that claimant did not “establish[] good cause for failing to appear at the March 18, 2020 hearing.” Order No. 20-UI-148502 at 6. The record evidence does not support the order under review’s conclusion.

Between the March 5, 2020 date that OAH mailed to claimant’s P.O. Box a copy of the notice of the March 18, 2020 hearing, and the March 18, 2020 hearing itself, the Governor of Oregon took increasingly restrictive steps in the State’s efforts to combat the spread of the coronavirus statewide. These steps included the Governor’s March 8, 2020 declaration of a State of Emergency, her March 12, 2020 closure of schools, and her March 17, 2020 issuance of new orders and guidance on social distancing. Notably, the Governor’s March 8, 2020 executive order declaring a State of Emergency specifically recognized:

According to the U.S Centers for Disease Control and Prevention, COVID-19 presents a “high” potential public health threat, both globally and in the United States. It spreads person-to-person through coughing and sneezing, close personal contact, such as touching or shaking hands, or touching an object or surface with the virus on it, and then touching your mouth, nose, or eyes.

Office of the Governor State of Oregon, Executive Order No. 20-03.¹ Furthermore, nationwide news coverage of the governmental escalation of restrictions related to the coronavirus and social distancing was and continues to be substantial.

Claimant’s concern that leaving her home would unnecessarily heighten her risk, and her vulnerable mother’s risk, of exposure to coronavirus was objectively reasonable in light of the Governor’s coronavirus-related quarantine orders and social distancing guidelines, as well as the Governor’s guidance “not to leave your home unless it was a necessity” and related television coverage. The virus was a circumstance beyond claimant’s control. Her adherence to public health guidelines suggesting she remain home at all relevant times was, likewise, reasonable. To any extent it was nevertheless within claimant’s reasonable control to drive to her Ashland P.O. Box during the relevant time, her failure to do so was an excusable mistake.

The fact that claimant would later decide to go to her P.O. Box in preparation for the April 18, 2020, hearing addressing her request to reopen is unremarkable. The situation that existed between March 5-18, 2020 involved claimant having no reason to believe that a hearing notice was forthcoming. On March 27, 2020, claimant’s circumstances substantially changed, as it was on that date that claimant learned that a hearing was held without her knowledge, her unemployment insurance benefits had been denied, and that she would need to request reopening of her March 18, 2020 hearing and monitor her mail for information about reopening in order to try to re-obtain them. Not only is it reasonable to infer, as a general principle, that an individual would be willing to incur some risk when they found out that

¹EAB has taken notice of Office of the Governor State of Oregon, Executive Order No. 20-03, which is a generally cognizable fact. OAR 471-041-0090(1) (May 13, 2019). A copy of the information is available to the parties at https://www.oregon.gov/gov/Documents/executive_orders/eo_20-03.pdf. Any party that objects to our taking notice of this information 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 noticed fact will remain in the record.

their main source of income had gone away, but here claimant affirmatively testified that she was willing to “take the chance of going to the post office” based on this substantial change in her circumstances.

The preponderance of the evidence demonstrates that the impact of the coronavirus on the State of Oregon, including the escalating nature of the Governor’s guidelines and restrictions and specific personal circumstances impacting claimant, collectively constituted factors beyond claimant’s reasonable control such that she has demonstrated good cause to support her request to reopen. Accordingly, claimant is entitled to have the March 18, 2020 hearing reopened.

DECISION: Order No. 20-UI-148502 is set aside, as outlined above.²

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

DATE of Service: May 18, 2020

NOTE: You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at courts.oregon.gov. Once on the website, use the ‘search’ function to search for ‘petition for judicial review employment appeals board’. A link to the forms and information will be among the search results.

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² The failure of any party to appear at the hearing on remand will not reinstate Order No. 20-UI-148502 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.



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

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فوراً، و إذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للمراجعة القانونية بمحكمة الاستئناف بأوريغون و ذلك بإتباع الإرشادات المدرجة أسفل القرار.

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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