

**EMPLOYMENT APPEALS BOARD DECISION**  
**2020-EAB-0405**

*Reversed*  
*Request to Reopen Allowed*  
*Merits Hearing Required*

**PROCEDURAL HISTORY:** On March 4, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 142758). Claimant filed a timely request for hearing. On March 24, 2020, the Office of Administrative Hearings (OAH) mailed notice of a telephone hearing scheduled for April 7, 2020 at 4:30 p.m. On April 7, 2020, claimant failed to appear for the hearing, and on April 8, 2020, ALJ Frank issued Order No. 20-UI-147674 dismissing claimant's request for hearing because claimant failed to appear. On April 14, 2020, claimant filed a timely request to reopen the hearing. On May 6, 2020, ALJ Frank conducted a hearing, and on May 14, 2020 issued Order No. 20-UI-149746, denying claimant's request to reopen the hearing and leaving Order No. 20-UI-147674 undisturbed. On May 19, 2020, claimant filed an application for review of Order No. 20-UI-149746 with the Employment Appeals Board (EAB).

EAB did not consider claimant's written argument when reaching this decision because they did not include a statement declaring 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).

**FINDINGS OF FACT:** (1) At all relevant times herein, the Department had claimant's correct address as its address of record for claimant. Claimant had experienced only one known mail delivery problem during 2020.

(2) On March 10, 2020, claimant filed a timely request for hearing on decision # 142758. Sometime after that, but before April 7, 2020, claimant received a telephone call from a state employee regarding his unemployment benefits. The employee told claimant his hearing was scheduled for April 7, 2020 at 4:30 p.m., and that he would receive a packet in the mail providing him the information he needed to provide his evidentiary documents for consideration at the hearing, and otherwise participate in the hearing. Claimant did not record or recall the person's name or telephone number, and was not clear if the person was from the Department or OAH.

(3) Claimant did not receive the notice of hearing and accompanying documents for the April 7 hearing. Claimant attempted to call the Department, but was not able to reach anyone at the Department. Claimant assumed that because someone called him to tell him his hearing date and time, and to expect the hearing packet in the mail, the same office would contact him before or at the time of his hearing. Not having received the notice of hearing, claimant did not know that he had to call in for the hearing.

(4) On April 7, claimant prepared for the hearing and as the hearing time approached, began “panicking” because he had not received a telephone call for the hearing. Audio Record at 17:05. Claimant did an internet search for information because he did not know where to call about his hearing. Claimant used the information he found online to make telephone calls and send emails regarding his hearing. “Most of [the people who answered his calls] had no idea” what claimant should do in his circumstances. Audio Record at 17:10. After his hearing, claimant found a telephone number to call “if having a problem with your hearing,” and called that number. Audio Record at 18:18. Claimant was told that he would receive a notice in the mail. A few days later, claimant received Order No. 20-UI-147674 dismissing his request for hearing.

**CONCLUSIONS AND REASONS:** Claimant had good cause to reopen the April 7, 2020 hearing, and a hearing on the merits of decision # 142758 is required.

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-149746 correctly found that claimant filed his request to reopen the April 7 hearing within 20 days of the date the hearing decision was issued. The remaining issue is to determine if claimant had good cause for failing to appear at the April 7 hearing.

Order No. 20-UI-149746 concluded that claimant did not show good cause to reopen the April 7 hearing in this case because claimant’s account of what occurred “leading up” to the April 7 hearing “strain[ed] credulity.”<sup>1</sup> The order under review did not find credible that claimant received a telephone call alerting him of the date and time of his hearing and to expect to receive a notice of hearing in the mail, and implicitly concluded that it was not reasonable for claimant to conclude that he did not need to contact OAH to obtain the notice before the hearing.<sup>2</sup> The order reasoned that claimant’s contention about the telephone call regarding the hearing date and time was not credible because claimant did not recall the date of the telephone call or the name of the caller, did not know why OAH would call him in addition to sending a notice, did not attempt to contact OAH to obtain the notice or submit his evidence for hearing, and started to “panic” at 4:15 p.m. even though he alleged he believed OAH would call him for his hearing at 4:30 p.m.<sup>3</sup> The order also reasoned that it was within claimant’s reasonable control before

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<sup>1</sup> Order No. 20-UI-149746 at 3.

<sup>2</sup> Order No. 20-UI-149746 at 3.

<sup>3</sup> Order No. 20-UI-149746 at 3.

and on April 7 to obtain the information he needed to appear for his hearing.<sup>4</sup> However, the record fails to support the order's conclusion that claimant failed to establish good cause for failing to appear at the April 7 hearing.

Claimant alleged he failed to appear at the hearing because he did not receive the notice of hearing that provided the information he needed to join the telephonic hearing. Audio Record at 10:00 to 10:43. When he did not receive the notice, claimant mistakenly assumed he would receive a telephone call for his hearing. His attempts to obtain that information before his scheduled hearing time did not produce the information he needed, and he did not appear for his hearing. The record shows that claimant's failure to appear was due primarily to not receiving the notice of hearing, and to his subsequent mistake in assuming he would receive a telephone call for the hearing. Not receiving the notice was a factor beyond claimant's reasonable control, and his assumption that he would receive a call for the hearing was an excusable mistake under the circumstances.

ORS 40.135(1)(q) provides that a letter duly directed and mailed was received in the regular course of the mail. However, that presumption may be rebutted by circumstantial evidence suggesting non-receipt. Claimant's testimony that he did not receive the notice of hearing, together with his conduct, rebuts the presumption that he received the notice of hearing OAH mailed to claimant on March 24, 2020. Although the ALJ took judicial notice of the fact that it is unusual for OAH to call a claimant about a hearing, the record does not show that claimant's testimony lacked credibility.<sup>5</sup> Claimant tried to contact the Department before the hearing date, and his testimony is credible that he was unable to speak with anyone at the Department in late March and early April 2020 when the Department received an unprecedented number of initial claims due to COVID-19. Claimant's conduct after that was consistent with a person who did not receive the notice of hearing and reasonably believed that, having been called about the hearing once before, he would be called about the hearing on the hearing date. Nor is it surprising that a person who did not have the notice of hearing would have difficulty contacting the correct office to gain access to a hearing at the last minute when he did not receive a call for the hearing. Not having received the notice of hearing, claimant did not know which government office to contact regarding the hearing.

In sum, claimant's testimony that he did not receive the notice of hearing is credible, and without having received the notice, it was reasonable that he believed he would receive another telephone call at the time of the hearing. Without having received the notice, it was also reasonable that claimant was unable to find the appropriate telephone number to call at the time of the hearing. The record therefore shows that claimant's failure to appear at the April 7 hearing arose from a factor beyond his reasonable control and an excusable mistake. Claimant had good cause to reopen the hearing, and a hearing on the merits of decision # 142758 is required.

**DECISION:** Order No. 20-UI-149746 is set aside, as outlined above.

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<sup>4</sup> Order No. 20-UI-149746 at 3.

<sup>5</sup> ORS 44.370 provides the following: "A witness is presumed to speak the truth. This presumption, however, may be overcome by the manner in which the witness testifies, by the character of the testimony of the witness, or by evidence affecting the character or motives of the witness, or by contradictory evidence."

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

**DATE of Service: June 3, 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](http://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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# 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.

**Employment Appeals Board - 875 Union Street NE | Salem, OR 97311**  
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