

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0416

Reversed
Request to Reopen Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On January 30, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct and claimant was disqualified from receiving benefits effective December 15, 2019 (decision # 95014). Claimant filed a timely request for hearing. On February 27, 2020, the Office of Administrative Hearings (OAH) served, by mail, notice of a telephone hearing scheduled for March 12, 2020 at 10:45 a.m. On March 12, 2020, claimant failed to appear for the hearing, and ALJ Griffin issued Order No. 20-UI-146098 dismissing claimant's request for hearing for that reason.

On March 23, 2020, claimant filed a timely request to reopen the hearing. On April 20, 2020, OAH served, by mail, notice of a telephone hearing scheduled for May 4, 2020 at 3:30 p.m. On May 4, 2020, ALJ Schmidt conducted a hearing, and on May 6, 2020, issued Order No. 20-UI-149338, denying claimant's request to reopen the hearing, leaving Order No. 20-UI-146098 undisturbed. On May 25, 2020, claimant filed an application for review of Order No. 20-UI-149338 with the Employment Appeals Board (EAB).

With the application for review, claimant submitted a written argument. Claimant 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, and did not show that factors or circumstances beyond claimant'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) Claimant received the February 27, 2020 notice of hearing and planned to participate in the 10:45 a.m. hearing scheduled for March 12, 2020.

(2) On approximately March 9, 2020, claimant became ill with severe, flu-like symptoms. For at least four days, he experienced fever, nausea, and diarrhea. On March 12, 2020, claimant "was deathly sick in

bed,” lost track of the time and day and forgot about his unemployment hearing.¹ On that day, claimant was too ill to remember that he had a scheduled hearing.

CONCLUSIONS AND REASONS: Claimant’s request to reopen the hearing on decision # 95014 is allowed. Claimant 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-149338 concluded that claimant’s request to reopen the March 12, 2020 hearing was timely, but that he failed to show good cause for reopening the hearing because he “simply forgot to attend the hearing.”² The order reasoned that although claimant asserted that he did not attend it the March 12 hearing due to illness, he was not credible because when he went to the employer’s office approximately a week after the dismissal of that hearing was mailed he told the employer’s witness that he did not attend the hearing because he “forgot” about it, without explaining that he had been ill.³ The order also reasoned that claimant lacked credibility because “he admitted that he...did not require medical attention” although the ALJ had only asked him why he did not go to the hospital, to which claimant replied that he was “deathly scared of the hospital.”⁴

Claimant’s testimony that on March 12, 2020, he was “was deathly sick in bed,” he “couldn’t think straight,” and “didn’t know what time it was or what day it was” was not disputed. That claimant did not explain to the employer more than a week after the hearing that he had been too ill that day to attend or that he did not go to the hospital for treatment of his illness, especially during the state’s coronavirus emergency,⁵ were not sufficient to outweigh claimant’s sworn testimony. It is more likely that not that claimant’s illness prevented him from remembering that he had a hearing on March 12 and consequently participating in the hearing or requesting a postponement. Because his illness that day was a factor beyond his reasonable control, claimant has shown good cause to reopen the March 12, 2020 hearing. His request to reopen that hearing is allowed and claimant is entitled to a hearing on the merits of decision # 95014.

DECISION: Order No. 20-UI-149338 is set aside, as set forth above.

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

¹ Audio Record at 7:15 to 7:45; 18:45 to 19:00.

² Order No. 20-UI-149338 at 5.

³ Order No. 20-UI-149338 at 5.

⁴ Order No. 20-UI-149338 at 5; Audio Record at 19:00 to 20:15.

⁵ See OAR 471-030-0070 (March 26, 2020)

DATE of Service: May 29, 2020

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 20-UI-149338 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

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 الإستئناف 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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