

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0424

Reversed
Request to Reopen Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On March 13, 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 unemployment insurance benefits effective February 9, 2020 (decision # 100243). Claimant filed a timely request for hearing. On April 3, 2020, the Office of Administrative Hearings (OAH) served notice of a telephone hearing scheduled for April 17, 2020 at 10:45 a.m. On April 17, 2020, claimant failed to appear for the hearing, and ALJ Murdock issued Order No. 20-UI-148321 dismissing claimant's request for hearing for that reason.

On April 25, 2020, claimant filed a timely request to reopen the hearing. On May 11, 2020, OAH served notice of a telephone hearing scheduled for May 19, 2020 at 8:15 a.m. On May 19, 2020, ALJ Murdock conducted a hearing at which the employer failed to appear, and on May 20, 2020, issued Order No. 20-UI-150064, denying claimant's request to reopen the hearing, leaving Order No. 20-UI-148321 undisturbed. On May 26, 2020, claimant filed a timely application for review of Order No. 20-UI-150064 with the Employment Appeals Board (EAB)

FINDINGS OF FACT: (1) Claimant received the April 3, 2020 notice of hearing and planned to participate in the 10:45 a.m. hearing scheduled for April 17, 2020. The notice of hearing included the following instruction: "At the time of hearing, you must call 1-877-622-4041. Using the telephone keypad, enter the access code 8807174 followed by the '#' key." Exhibit 1 at 1. It also included another instruction: "If either an administrative law judge or a representative from the Office of Administrative Hearings has not appeared in the hearing within five (5) minutes of the scheduled start time of the hearing, or you are having difficulty calling in for the hearing, hang up and call 1-800-311-3394." Exhibit 1 at 1. It also stated, "If you have questions prior to your hearing, call 1-800-311-3394 (or local Salem area 503-947-1515)." Exhibit 1 at 1.

(2) On April 17, 2020, at approximately 10:35 a.m., claimant called the hearing conference line number, 1-877-622-4041, heard only a "beeping" sound, and was unable to enter the access code. Audio Record

at 6:15 to 6:30. She began to panic that she might miss the hearing, and called the 1-800-311-3394 “difficulty” number several times, and no one answered. Audio Record at 6:30 to 6:50; 7:30 to 7:50. Claimant then called the local Salem area number listed on the hearing notice, 503-947-1515, and did not hear a ringing sound, but a busy signal. After approximately fifteen minutes and the time for the hearing had passed, claimant gave up calling the numbers listed because she had received no answer on any of the numbers she tried. Claimant did not call the hearing conference-line number, 1-877-622-4041 at 10:45 a.m. because she had already experienced difficulty calling the number and thereafter was trying to reach someone at OAH by using the other numbers listed in the instructions.

CONCLUSIONS AND REASONS: Claimant’s request to reopen the hearing on decision # 100243 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-150064 concluded that claimant filed a timely request to reopen the April 17, 2020 hearing, but denied the request because she failed to show good cause for failing to appear at the hearing.¹ The order reasoned that although claimant attempted to call in on the hearing conference line ten minutes prior to the scheduled start of the hearing and experienced technical difficulties at that time, she “made no effort to try again when the hearing was supposed to begin, as instructed,” which was within her reasonable control.²

Although the record shows that it was within claimant’s reasonable control to attempt to call in on the hearing conference line precisely at 10:45 a.m., the record fails to show that even if she had done so, she would not have experienced the same difficulty she had ten minutes earlier when she called that number. There is no dispute that claimant experienced “difficulty” in calling in at 10:35 a.m. on the hearing conference line, and that she then spent approximately fifteen minutes following the notice’s instructions regarding the steps to take if a party experienced “difficulty” in calling the conference line. Viewing the record as a whole, claimant substantially complied with all of the instructions in the hearing notice and despite doing so, was unable to participate in the April 17, 2020 hearing. Accordingly, although claimant’s failure to participate in that hearing may have been caused by a mistake on her part, she established that any mistake she made was an excusable mistake based on following the instructions given on the notice of hearing if she experienced “difficulty calling in for the hearing.”

Because claimant’s failure to participate in the April 17, 2020 hearing was caused, more likely than not, by an excusable mistake her part, claimant has shown good cause to reopen the April 17, 2020 hearing. Her request to reopen that hearing is allowed. Claimant is entitled to a hearing on the merits of decision # 100243.

¹ Order No. 20-UI-150064 at 3-4.

² Order No. 20-UI-150064 at 3-4.

DECISION: Order No. 20-UI-150064 is set aside, as outlined above.

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

DATE of Service: June 4, 2020

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 20-UI-150064 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 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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