

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0438

Reversed
Request to Reopen Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On February 26, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work and was not eligible to receive unemployment insurance benefits from January 12, 2020 through February 8, 2020 (decision # 121051). Claimant filed a timely request for hearing. On April 22, 2020, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for May 6, 2020 at 1:30 p.m. On May 6, 2020, claimant failed to appear at the hearing, and on May 7, 2020 ALJ Schmidt issued Order No. 20-UI-149384, dismissing claimant's request for hearing for failure to appear. On May 8, 2020, claimant filed a timely request to reopen the May 6, 2020 hearing. On May 21, 2020, ALJ Logan conducted a hearing on claimant's request, and on May 26, 2020 issued Order No. 20-UI-150218, denying the request, leaving Order No. 20-UI-149384 undisturbed. On June 1, 2020, claimant filed a timely application for review of Order No. 20-UI-150218 with the Employment Appeals Board (EAB).

EAB considered claimant's written argument in reaching this decision.

FINDINGS OF FACT: (1) In late April 2020, claimant had been trying to arrange a diagnostic medical procedure for a serious medical condition at a Veteran's Administration (VA) hospital in Roseburg, Oregon. Claimant received the notice for the May 6, 2020 hearing in late April. When claimant received the notice, he was preoccupied with trying to arrange the medical procedure and did not focus on the date of his hearing for his unemployment insurance benefits. He mistakenly thought that it was in late May. On May 2, 2020, the hospital in Roseburg finally told claimant that it could complete the procedure on May 5, 2020.

(2) At all times relevant herein, claimant resided in North Bend, Oregon. On May 5, 2020, claimant went to the VA hospital in Roseburg, Oregon to undergo the diagnostic medical procedure. Claimant was preoccupied with concern that he may have a serious medical condition and did not check his notice for his unemployment insurance benefits hearing before he went to Roseburg. Because the procedure was completed late in the afternoon on May 5, claimant stayed in Roseburg until May 6, 2020 to ensure he would not experience adverse symptoms from the May 5 procedure and have to travel back to

Roseburg. On May 6, claimant was distracted by pain from the May 5 procedure, and another person drove him back to his home in North Bend. Claimant arrived home at 2:30 p.m., checked the notice of hearing, and realized that he had missed the hearing. Claimant immediately contacted OAH about his failure to appear at the hearing and was told to follow the instructions on Order No. 20-UI-150218 to request to reopen the hearing.

CONCLUSIONS AND REASONS: Claimant's request to reopen the hearing on decision # 121051 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-150218 concluded that claimant's request to reopen the May 6, 2020 hearing was timely, but that claimant failed to show good cause for reopening the hearing because claimant had the notice of hearing and "could have remembered the date and time and referred to the [notice] to resolve any uncertainty."¹ The order reasoned further that claimant could have appeared from Roseburg at the time of the hearing, or contacted OAH to request that the hearing be reset because it conflicted with his medical procedure.² The order also reasoned that, although a significant diagnostic medical procedure "might affect a person's attention to other matters, . . . there is no evidence that claimant forgot about the hearing because of the . . . [medical] tests."³ However, the record fails to support the conclusion that claimant did not show good cause for reopening the hearing.

As the order under review recognized, preoccupation with scheduling and completing a medical procedure to diagnose a serious medical condition, plus planning to travel to undergo the procedure, could "affect a person's attention to other matters." However, the order under review concluded that claimant's lack of attention did not cause him to forget about the hearing. However, the record shows that more likely than not, at the time claimant received the notice of hearing, he was preoccupied with concern that he might have a serious medical condition and was focused on scheduling and traveling for the medical procedure at the VA hospital in Roseburg. The record shows that more likely than not, claimant's state of mind when he received the notice of hearing interfered with his ability to focus on the date of the hearing, and caused him to misread or misremember the date. Moreover, because claimant thought the hearing was later in May, he did not contact OAH to reset the hearing, which conflicted with his medical procedure. Because claimant's state of mind when he received the notice caused him to make an excusable mistake, claimant has shown good cause to reopen the May 6, 2020 hearing.

Claimant's request to reopen the hearing therefore is allowed, and claimant is entitled to a hearing on the merits of decision # 121051.

DECISION: Order No. 20-UI-150218 is set aside. Claimant is entitled to a hearing on the merits of decision # 121051.

¹ Order No. 20-UI-150218 at 3.

² Order No. 20-UI-150218 at 3.

³ Order No. 20-UI-150218 at 3.

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

DATE of Service: June 10, 2020

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 20-UI-150218 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.