

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0451

Reversed
Request to Reopen Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On January 27, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause and was disqualified from receiving unemployment insurance benefits effective December 22, 2019 (decision # 74030). Claimant filed a timely request for hearing. On February 12, 2020, the Office of Administrative Hearings (OAH) mailed to the parties notice of a telephone hearing scheduled for February 26, 2020 at 8:15 a.m. On February 26, 2020, claimant failed to appear for the hearing, and ALJ Roberts issued Order No. 20-UI-145097 dismissing claimant's request for hearing for failure to appear.

On March 17, 2020, claimant filed a timely request to reopen the hearing. On March 30, 2020, OAH mailed to the parties notice of a telephone hearing scheduled for April 13, 2020 at 8:15 a.m. to consider claimant's request to reopen the February 26, 2020 hearing, and if granted, the merits of decision # 74030. On April 13, 2020, ALJ Wyatt conducted a hearing, at which the employer failed to appear, and on April 16, 2020, issued Order No. 20-UI-148175, concluding that claimant showed good cause for reopening the February 26, 2020 hearing and that the employer discharged claimant, but not for misconduct.

On April 20, 2020, the employer filed a timely request to reopen the April 13, 2020 hearing. On April 30, 2020, OAH mailed to the parties notice of a telephone hearing scheduled for May 11, 2020 at 2:30 p.m. to consider the employer's request to reopen the April 13, 2020 hearing, and if granted, the merits of decision # 74030. On May 11, 2020, ALJ Wyatt conducted a hearing, at which both claimant and the employer appeared, and on May 19, 2020, issued Order No. 20-UI-149996, denying the employer's request to reopen the April 13, 2020 hearing, and leaving Order No. 20-UI-148175 undisturbed. On June 8, 2020, the employer filed an application for review of Order No. 20-UI-149996 with the Employment Appeals Board (EAB).

With the application for review, the employer submitted a written argument. The employer 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). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) On March 8, 2020, Governor Brown issued Executive Order No. 20-03 declaring a statewide emergency due to the infectious novel coronavirus. Executive Order 20-03 (effective March 8, 2020). Following that declaration, on March 23, 2020, Governor Brown issued Executive Order No. 20-12 directing and ordering that individuals stay at home or at their place of residence to minimize travel, other than essential travel to or from a home [or] residence for obtaining or providing food, shelter [or other] essential consumer needs . . . for the care of family members . . . elderly persons . . . persons with disabilities, or other vulnerable persons . . . consistent with the directives of [her] Executive Orders and guidance from the Oregon Health Authority. Executive Order 20-12 (effective March 23, 2020).¹

(2) The employer closed its doors from March 23, 2020 to April 16, 2020 due to the novel coronavirus.

(3) On March 30, 2020, OAH mailed a Notice of Hearing for a hearing on April 13, 2020 regarding claimant's request to reopen, and if granted, the merits of decision # 74030. The hearing notice was mailed to the employer's address of record on file with the Department. The address of record was a post office box in Ontario, Oregon.

(4) The employer's owner did not check the employer's post office box between March 23, 2020 and April 16, 2020 because of "the COVID thing." Audio Record at 18:30 to 19:45. The owner lived with and cared for his elderly father, who had experienced pneumonia several times in the past and was at an increased risk for the virus. The owner wanted to minimize his chances of contracting the coronavirus and passing it on to his father. The owner left his residence between March 23 and April 16 only when "[he] absolutely had to," such as for necessities like groceries. Audio Record at 20:00 to 21:00.

(5) On April 16, 2020, OAH mailed Order No. 20-UI-148175 to the parties. Approximately two days later, the employer's owner picked up the employer's mail from its post office box and learned that a hearing had been held on April 13, 2020, and that the ALJ had reopened the February 26, 2020 hearing and concluded the employer discharged claimant, not for misconduct. On April 20, 2020, the employer filed a timely request to reopen the April 13, 2020 hearing.

CONCLUSIONS AND REASONS: The employer's request to reopen the April 13, 2020 hearing on decision # 74030 is allowed. The employer 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

¹ Executive Order Nos. 20-03 and 20-12 are generally cognizable facts, and we take notice of them for purposes of reaching this decision. Any party that objects to our doing so 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(3) (October 29, 2006). Unless such objection is received and sustained, the noticed facts will remain in the record.

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-149996 concluded that the employer's request to reopen the April 13, 2020 hearing was timely, but that the employer's owner failed to show good cause for reopening the hearing, reasoning:

The owner closed the employer's doors from March 23, 2020 to April 16, 2020, due to the novel coronavirus. The owner . . . did not check his business post office box during that time The owner testified that he did not go to the Ontario, Oregon post office because he wanted to limit potential exposure to the virus for himself and his father (with whom he lives). However, the owner did shop for groceries when necessary and was not quarantined. More likely than not, accessing his mail at the post office at some point between March 30 and April 13, 2020 would have been feasible without unreasonable risk. Moreover, the owner was aware of the ongoing . . . benefits matter. . . . If the owner had questions about whether a hearing was scheduled, he could have called [the Department or OAH] for further information. . . . I am unable to conclude the employer was prevented from appearing at the April 23, 2020 hearing due to factors beyond its reasonable control or because of an excusable mistake.

Order No. 20-UI-149996 at 3. The order under review is not supported by the record.

The existence and spread of the coronavirus in Oregon, as well as Governor Brown's stay at home order issued March 23, 2020, were both factors beyond the owner's reasonable control and both likely contributed to his objectively reasonable decision to limit his travel to the post office between March 23 and April 16, 2020. The owner's concern for his elderly father, who had an increased vulnerability to the virus, was also an objectively reasonable motivation for the owner to limit his travel. The record also fails to show that the owner had any reason to suspect a hearing might be scheduled because claimant's March 17, 2020 request to reopen the February 26, 2020 hearing was not copied to the employer. For these reasons, the owner has shown that factors beyond his reasonable control or an excusable mistake likely prevented him from retrieving his mail or otherwise becoming aware of the hearing.

Accordingly, the employer has demonstrated good cause to reopen the April 13, 2020 hearing. The employer's request to reopen the hearing on decision # 74030 therefore is granted. A hearing on the merits of decision # 74030 is required.

DECISION: Order No. 20-UI-149996 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: June 16, 2020

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 20-UI-149996 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 ໄດ້ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

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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