

**EMPLOYMENT APPEALS BOARD DECISION**  
**2020-EAB-0510**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On March 4, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct, and disqualifying her from benefits effective January 12, 2020 (decision # 75348). Claimant filed a timely request for hearing. On March 20, 2020, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for April 2, 2020 at 8:15 a.m., at which time claimant failed to appear. On April 3, 2020, ALJ Murdock issued Order No. 20-UI-147447, dismissing claimant's hearing request for failure to appear. On April 21, 2020, claimant filed a timely request to reopen the hearing that included a written statement explaining why she failed to appear. ALJ Kangas reviewed claimant's request, and on April 30, 2020 issued Order 20-UI-149079, denying the request. On May 18, 2020, claimant filed a timely application for review with the Employment Appeals Board (EAB); the application for review was received July 7, 2020.

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:** Claimant missed the April 2, 2020 hearing because of "the loss of my job, no income coming in, my resources not available in my community" and lacking a computer at her home, and being "very stressed, tired, worried" because of her circumstances and COVID-19. DR Exhibit 5.

**CONCLUSIONS AND REASONS:** This matter is reversed, and remanded for additional proceedings to determine whether or not claimant's request to reopen should or should not be allowed.

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).

The order under review concluded that claimant did not establish good cause to reopen the April 2<sup>nd</sup> hearing about her work separation with the employer because, although she had “a reason why she did not timely file a request for hearing [*sic*] but that did not negate it was within her reasonable control to do so.” Order No. 20-UI-149079 at 2. The ALJ who issued the order also wrote, “I am persuaded the appellant was capable of keeping track of when the hearing was scheduled,” and that claimant “did not provide any information that, had she not missed the start of her hearing, she would have been unable to participate in the hearing,” and therefore did not show good cause to reopen the hearing. Order No. 20-UI-149079 at 2-3. The record does not support the order’s conclusions.

While the circumstances claimant described in her request to reopen do not “negate it was within her reasonable control” to appear at the scheduled hearing, neither do the circumstances establish that it *was* within her reasonable control to appear. There is nothing in claimant’s request to reopen or the record in this matter that indicates whether or not claimant was capable of keeping track of the hearing date. Likewise, there is nothing in the record establishing whether or not claimant was able or unable to participate in the hearing had she not missed the hearing. There is not enough evidence in the record to determine whether or not participating in the April 2<sup>nd</sup> hearing was within claimant’s reasonable control.

Even if appearing at the hearing was within claimant’s reasonable control, she might still establish good cause to reopen the hearing if her failure to appear was the result of an “excusable mistake,” for example, if her failure to appear was because of a due process issue, the result of inadequate notice, because of her reasonable reliance on another, or because she was unable to follow directions on the notice of hearing despite her substantial efforts to comply.

The circumstances that claimant described, including a lack of resources in her community, not having a computer in her home, being “very stressed, tired, worried” because of her circumstances and COVID-19, suggest that appearing on time for the April 2<sup>nd</sup> hearing might have been beyond her reasonable control. The same circumstances also suggest that she might have failed to appear at the hearing due to a mistake; depending on the reasons for the mistake, it might have been an excusable one.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because claimant’s request to reopen suggests the possibility that she might have good cause to reopen the April 2<sup>nd</sup> hearing, the record does not support a denial of her reopen request, and additional evidence is required before any determination can be made on that issue. Order No. Order No. 20-UI-149079 therefore is reversed, and this matter is remanded.

On remand, the primary issue will be whether or not the circumstances that caused claimant to miss the April 2<sup>nd</sup> hearing amounted to “good cause” to reopen the hearing. Only if claimant establishes good cause to reopen the hearing would the ALJ holding the remand hearing have jurisdiction over the issue of claimant’s discharge.

**DECISION:** Order No. 20-UI-149079 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service: July 8, 2020**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 20-UI-149079 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 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.

**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](http://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.