

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0702

Reversed & Remanded

PROCEDURAL HISTORY: On June 1, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant willfully made misrepresentations and failed to report material facts to obtain unemployment insurance benefits and assessing an \$8,620 overpayment, a \$2,586 monetary penalty, and a 52-week penalty disqualification from future benefits (decision # 203655). Claimant filed a timely request for hearing. On June 23, 2016, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for July 8, 2016 at 1:30 p.m., at which time claimant failed to appear. On July 8, 2016, ALJ Shoemake issued Order No. 16-UI-63440, dismissing claimant's request for hearing for failure to appear. On July 28, 2016, Order No. 16-UI-63440 became final without claimant having filed a timely request to reopen.

On October 28, 2020, claimant filed a late request to reopen the July 8, 2016 hearing. ALJ Kangas considered claimant's request, and on October 29, 2020, issued Order No. 20-UI-155881, denying claimant's late request to reopen. On November 3, 2020, claimant filed an application for review of Order No. 20-UI-155881 with the Employment Appeals Board (EAB).

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019) to complete the record. The additional evidence consists of a copy of claimant's written argument submitted to EAB with her application for review (marked as EAB Exhibit 1), a copy of Department records dated October 30, 2020, October 28, 2020, October 5, 2020, September 8, 2020, July 19, 2016 and July 18, 2016 (together marked as EAB Exhibit 2), a copy of a Medford Police Department incident report (marked as EAB Exhibit 3), and a copy of claimant's ReliaCard bank statements for the months of January through May 2016 (marked as EAB Exhibit 4). A copy of EAB Exhibits 1-4 have been provided to the parties with this decision. Any party that objects to our admitting EAB Exhibits 1-4 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(2). Unless such objection is received and sustained, EAB Exhibits 1-4 will remain in the record.

FINDINGS OF FACT: (1) On December 28, 2015, claimant reported a vehicle burglary to the Medford Police Department. Claimant reported that her vehicle had been "completely ransacked" and that whoever burglarized her vehicle took her credit cards, an ATM card and "also my relia card [and]

all my pin numbers were in there as well.” EAB Exhibit 3. On May 20, 2016, claimant followed up with the police and reported that “someone has been claiming her unemployment card to get benefits.” EAB Exhibit 3.

(2) On June 1, 2016, the Department mailed decision # 203655 to claimant at an address on Fairmount in Medford. A request for hearing on decision # 203655 was timely filed.

(3) On June 23, 2016, OAH mailed notice of a hearing scheduled for July 8, 2016 at 1:30 p.m., to claimant at the Fairmount address. Claimant failed to appear at the scheduled hearing and on July 8, 2016, OAH mailed Order No. 16-UI-63440, dismissing claimant’s request for hearing for failure to appear to claimant at the Fairmount address.

(4) On July 18, 2016, the Department received a letter from claimant, the content of which is presently unknown. EAB Exhibit 2 at 2.

(5) On July 19, 2016, the Department received a letter from claimant, the content of which is presently unknown. EAB Exhibit 2 at 2.

(6) On September 8, 2020, claimant contacted the Department by telephone. A Department representative transferred the call to “Tier 2 DLF” but did not prepare any other notes of the conversation. EAB Exhibit 2 at 1.

(7) On October 5, 2020, claimant contacted the Department to check on the status of an “ID THEFT INVESTIGATION” concerning her claim, told a Department representative that “she did not make the UI claim she was in prison at the time.” EAB Exhibit 2 at 1. The Department representative transferred the call to a Department investigator’s voicemail. EAB Exhibit 2 at 1.

(8) On October 28, 2020, a Department representative engaged in a telephone call with claimant. The representative explained to claimant that the Department “will not modify or reverse the misrep decision issued in 2016 or open a new ID theft case.” EAB Exhibit 2 at 1. The representative advised claimant that “if she still disagrees with the decision, she can ask OAH for a late hearing after the failure to appear decision 2016.” The representative noted that the representative “provided clmt with OAH phone number.” EAB Exhibit 2 at 1.

(9) On October 28, 2020, claimant sent an email to OAH that stated, “I spoke with a Mr. William Ziegler today on my unemployment case from back in 2017 and he referred me to you guys to request a late hearing due to misrepresentation so I just want to know about how to go about doing that or if there’s somewhere else you need to contact.” Exhibit 5. The email was construed as a late request to reopen the July 8, 2016 hearing.

(10) On October 30, 2020, a Department representative engaged in a telephone call with claimant. The representative made notes of the call as follows: “PTC with clmt – clmt stated that she was not eligible until week 34. Stated that she did not claim the weeks before then. Claim is being investigated due to theft. More notes on BYE 31/21.” EAB Exhibit 2 at 1.

CONCLUSIONS AND REASONS: Order No. 20-UI-155881 is set aside and this matter remanded for further development of the record.

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. The period within which a party may request reopening may be extended if the party requesting reopening has good cause for failing to request reopening within the time allowed, and acts within a reasonable time. OAR 471-040-0041(1) (February 10, 2012). "Good cause" exists when an action, delay, or failure to act arises from an excusable mistake or from factors beyond an applicant's reasonable control. OAR 471-040-0041(2). "A reasonable time," is seven days after the circumstances that prevented a timely filing ceased to exist. OAR 471-040-0041(3). The party requesting reopening shall set forth the reason(s) for filing a late request to reopen in a written statement, which OAH shall consider in determining whether good cause exists for the late filing, and whether the party acted within a reasonable time. OAR 471-040-0041(4).

The order under review concluded that claimant filed her request to reopen late and "includes no explanation of why she did not file the reopening request within the 20 days allowed." Order No. 20-UI-155881 at 3. However, the record fails to show that claimant received adequate notice of the manner and time requirements for requesting reopening of the July 8, 2016 hearing as necessary for due process of law.

In claimant's written argument before EAB, claimant asserted that she "never received a notice of a hearing," and "did not learn there had been a hearing until October of 2020." EAB Exhibit 1. If that is true, claimant never received a copy of Order No. 20-UI-155881, which set forth instructions for filing a request to reopen the hearing after claimant did not attend the hearing. Claimant's October 28, 2020 email to OAH can be construed as a request for help on how to request a reopening of the July 8, 2016 hearing. In that email, claimant stated, "I spoke with a Mr. William Ziegler today on my unemployment case from back in 2017 and he referred me to you guys to request a late hearing due to misrepresentation so I just want to know about how to go about doing that or if there's somewhere else you need to contact." Exhibit 5. Based on this record, OED mainframe records do not establish that any Department employee told claimant to request reopening, or told her how to request reopening.

Claimant is entitled to a hearing on the issue of her late request to reopen. At the remand hearing, the Department should present evidence of the content of the letters it received from claimant on July 18 and 19, 2016, and what was discussed during the September 8, 2020 telephone conversation with claimant during which she was transferred to "Tier 2 DLF" for further discussion. Due process of law requires that claimant be given a meaningful opportunity to be heard on the late reopening issue, and there is nothing in this record in its current state that establishes that she has received that in this case.

ORS 657.270 requires that all parties be given a reasonable opportunity for a fair hearing. That obligation necessarily requires an ALJ to ensure that the record developed 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 further development of the record is necessary for a determination of whether claimant had good cause for filing what has been construed as a late request to reopen, and if so, whether she filed it within a reasonable time, Order No. 20-UI-155881 is reversed, and this matter is remanded for inquiry on those issues.

The remand hearing will be to determine if claimant can establish that she had good cause for filing her request to reopen late and that she filed it within a reasonable time. If claimant meets that burden, the next issue would be whether claimant can establish good cause to reopen the July 8, 2016 hearing on the merits of decision # 203655. If claimant establishes good cause to reopen the July 8, 2016 hearing, only then would the ALJ have jurisdiction to conduct a hearing on the merits of decision # 203655.

DECISION: Order No. 20-UI-155881 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: November 25, 2020

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 20-UI-155881 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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