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State of Oregon  
**Employment Appeals Board**  
875 Union St. N.E.  
Salem, OR 97311

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<p><b>EMPLOYMENT APPEALS BOARD DECISION</b> <b>2020-EAB-0772</b></p>
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*Late Applications for Review Allowed*  
*Requests to Reopen Allowed*  
*Merits Hearings Required*

**PROCEDURAL HISTORY:** On July 1, 2020, the Oregon Employment Department (the Department) served two notices of two administrative decisions, one concluding claimant voluntarily left work with employer Weber without good cause and was disqualified from receiving unemployment insurance benefits effective November 10, 2019 (decision # 145714), and the other concluding that claimant voluntarily left work with employer Mok without good cause and was disqualified from receiving benefits effective November 10, 2019 (decision # 153925).<sup>1</sup> On July 12, 2020, claimant filed timely requests for hearing on both decisions. On July 23, 2020, the Office of Administrative Hearings (OAH) mailed two notices of two hearings scheduled for August 5, 2020, at which time claimant failed to appear at both hearings. On August 5, 2020, ALJ Roberts issued Orders No. 20-UI-152848 and 20-UI-152850, dismissing claimant's requests for hearing for failure to appear. Claimant filed requests to reopen both August 5, 2020 hearings. ALJ Kangas reviewed claimant's requests, and on October 28, 2020, issued Orders No. 20-UI-155810 and 20-UI-155813, denying both of claimant's requests to reopen. On November 17, 2020, both orders became final without claimant having filed applications for review with the Employment Appeals Board (EAB). On November 25, 2020, claimant filed late applications for review of both decisions with EAB.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 20-UI-155810 and 20-UI-155813. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2020-EAB-0771 and 2020-EAB-0772).

**EVIDENTIARY RULING:** With claimant's application for review she submitted transmission logs showing that on August 24, 2020 she successfully transmitted applications for review, letters, and

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<sup>1</sup> The Department issued four decisions in total on July 1, 2020. This decision is handling appeals from two of those orders in Case Nos. 2020-UI-10475 and 2020-UI-10476. Claimant's other two cases (Case No. 2020-UI-10477 and 2020-UI-10478 – claimant's separations from employers Calfee and Jones) are under review with EAB to decide whether claimant had good cause for quitting those jobs.

requests to reopen to the Department. Because that evidence is necessary to complete the record in these matters, EAB has considered it when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 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, the exhibit will remain in the record.

**FINDINGS OF FACT:** (1) Claimant worked for four employers under one contract, and her employment with all four employers ended at the same time. She received four administrative decisions from the Department and filed a single request for hearing that included all four employers.

(2) Claimant received a single envelope that contained four notices of hearing. She read the notices and observed that each of the four notices listed a different employer name. She did not notice that the hearings were scheduled for different times of day. She thought she was going to have one hearing about her unemployment benefits. She showed the notice to three other people, all of whom agreed that they thought there would be only one hearing.

(3) Claimant planned to participate in the hearing. She thought a single hearing was scheduled for August 5, 2020 at 2:45 p.m. Shortly before 1:30 p.m. on August 5, one of claimant's former employers sent claimant an email telling her that she had missed two hearings and had a hearing at 1:30 p.m. that day. Claimant called into the 1:30 p.m. and 2:45 p.m. hearings, but had missed the hearings that had been scheduled in the cases at issue in this consolidated decision, which had been scheduled for 9:30 a.m. and 10:45 a.m. that morning.

(4) On August 24, 2020, claimant sent a fax to the Department that included both applications for review and requests to reopen the cases at issue in this consolidated decision. Claimant's August 24, 2020 fax explained why she missed two of the August 5<sup>th</sup> hearings and requested that the 9:30 a.m. and 10:45 a.m. hearings be reopened. For unknown reasons, claimant's August 24, 2020 fax was either not received or not accurately processed and sent to EAB or OAH.

**CONCLUSIONS AND REASONS:** Claimant's late applications for review are allowed. Claimant filed timely requests to reopen the August 5<sup>th</sup> hearings in these two cases, and established good cause to reopen the hearings. Merits hearings on decisions # 145714 and 153925 are required.

**Late Applications for Review.** An application for review is timely if it is filed within 20 days of the date that the Office of Administrative Hearings (OAH) mailed the order for which review is sought. ORS 657.270(6); OAR 471-041-0070(1) (May 13, 2019). The 20-day filing period may be extended a "reasonable time" upon a showing of "good cause." ORS 657.875; OAR 471-041-0070(2). "Good cause" means that factors or circumstances beyond the applicant's reasonable control prevented timely filing. OAR 471-041-0070(2)(a). A "reasonable time" is seven days after the circumstances that prevented the timely filing ceased to exist. OAR 471-041-0070(2)(b).

Orders No. 20-UI-155810 and 20-UI-155813 became final on November 17, 2020 and claimant filed her applications for review on November 25, 2020. Claimant's applications for review were therefore filed late. Given the procedural irregularities in this case, the difficulty parties have regularly experienced

contacting the Department during the pandemic, and the errors that have occurred with respect to handling claimant's filings in this case, due process of law requires that claimant be allowed review of the orders that denied her requests to reopen. Claimant's late applications for review are therefore allowed.

The next issue in these cases is whether claimant filed her requests to reopen timely or late.

**Late Requests to Reopen.** 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 orders under review concluded that claimant filed late requests to reopen on October 27, 2020. Orders No. 20-UI-155810 and 20-UI-155813 at 3. The record as supplemented at EAB does not support those conclusions. EAB Exhibit 1 clearly establishes that claimant originally filed timely requests to reopen these cases on August 24, 2020. Requests to reopen filed August 24, 2020 are timely.

It is irrelevant that claimant's re-requests for reopening filed October 22<sup>nd</sup> and November 27<sup>th</sup> were late or did not include a written statement. Claimant should not have had to file the re-requests in the first place, and was not required to file those re-requests within a designated time period or with a written statement.

The next issue in these cases is whether claimant established good cause for failing to appear at the August 5<sup>th</sup> hearings in these two cases.

**Requests to Reopen.** 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). An "excusable mistake" is customarily defined to include due process issues, the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply.

Claimant failed to appear at the two August 5<sup>th</sup> morning hearings because she did not realize that she would have four hearings based upon the termination of a single employment contract, and based upon her filing of a single request for hearing. EAB has consistently held since 2010 that an individual's failure to attend one or some hearings scheduled on the same day regarding a same or similar matter is an excusable mistake. *See* Employment Appeals Board Decision 10-AB-2774 (September 30, 2010)

(claimant failed to appear at multiple hearings because expected only one hearing). In these consolidated cases, claimant's failure to appear was the result of an excusable mistake.

Claimant had good cause for failing to appear at the two August 5<sup>th</sup> hearings at issue in these consolidated cases. She is therefore entitled to hearings on the merits of decisions # 145714 and 153925.

In reaching this decision we note that claimant has requested to have a consolidated hearing on decisions # 145714 and 153925. However, claimant should expect to receive two notices of hearing scheduling two separate hearings when these matters return to OAH.

We also note that claimant has requested reconsideration of EAB's decisions in Cases No. 2020-UI-10477 and 2020-UI-10478. Those matters are currently open and under review at EAB. EAB will review those matters separately from the reopen matters at issue in this consolidated decision, and will issue consolidated decisions on those two matters separately from the EAB decisions in these two matters.

**DECISION:** Claimant's late applications for review are allowed. Orders No. 20-UI-155810 and 20-UI-155813 are set aside. These matters are remanded to OAH for hearings on the merits of decisions # 145714 and 153925.

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

**DATE of Service: December 14, 2020**

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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 desisyong ito.

## 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 ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄຳຕັດສິນນີ້.

**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**  
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