

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0005

Reversed
Request to Reopen Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On September 22, 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 March 8, 2020 (decision # 92225). Claimant filed a timely request for hearing. On October 20, 2020, the Office of Administrative Hearings (OAH) served, by mail, notice of a telephone hearing scheduled for November 3, 2020 at 1:30 p.m. On November 3, 2020, ALJ Griffin conducted the hearing, at which the employer failed to appear, and on November 4, 2020 issued Order No. 20-UI-156068 concluding claimant quit work with good cause and was not disqualified from receiving benefits.

On November 16, 2020, the employer filed a timely request to reopen the November 3, 2020 hearing. On December 14, 2020, ALJ Griffin conducted a hearing, and on December 15, 2020 issued Order No. 20-UI-157649, denying the employer's request for a reopening, leaving Order No. 20-UI-156068 undisturbed. On December 30, 2020, the employer filed an application for review of Order No. 20-UI-157649 with the Employment Appeals Board (EAB).

The employer submitted a written argument with their application for review. 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). The argument also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond the employer's reasonable control prevented them from offering the information during the hearing as required by OAR 471-041-0090 (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) Jarno International Inc., the employer, maintained two addresses at which it received its business mail: Jarno International, PO Box 8598, Bend OR 97708; and Jarno International, 63023 Layton Ave, Unit 2, Bend, OR 97701.

(2) The employer received mail addressed to Jarno International, 63023 Layton Ave, Unit 2, Bend, OR 97701 when delivered to that address by the United States Postal Service (USPS). The employer received mail addressed to Jarno International, PO Box 8598, Bend OR 97708 when its sole owner, (JO), retrieved mail from PO Box 8598, which occurred once per week, typically on Mondays.

(3) On September 22, 2020, the Department mailed decision # 92225 to claimant and the employer. The Department mailed decision # 92225 to the employer at its address PO Box 8598, Bend OR 97708. Record Document (Hearing Referral) at 1-2.

(4) On October 12, 2020, claimant requested a hearing on decision # 92225 by contacting the Department. Record Document (Hearing Referral) at 1-2.

(5) On October 20, 2020, OAH mailed the parties notice of the November 3, 2020 hearing on decision # 92225. OAH mailed the notice of hearing to the employer at its address PO Box 8598, Bend OR 97708. Exhibit 1. JO retrieved the employer's mail from PO Box 8598 during the week of October 26, 2020, and the notice of hearing was not there. That notice of hearing was delivered to PO Box 8598 on or after October 27, 2020.

(6) On November 3, 2020, at approximately 3:00 p.m., JO retrieved the employer's mail from PO Box 8598, which included the notice of hearing. At that time, he reviewed the hearing notice and realized he had missed the hearing scheduled for that day.

CONCLUSIONS AND REASONS: The employer's request to reopen the hearing on decision # 92225 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 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 party requesting reopening shall set forth the reason(s) for missing the hearing in a written statement, which the Office of Administrative Hearings (OAH) shall consider in determining whether good cause exists for failing to appear at the hearing. OAR 471-040-0040(3).

The record shows that the employer's request to reopen was timely because it was filed on November 16, 2020, which was within 20 days of the date on which Order No. 20-UI-156068 was issued. However, Order No. 20-UI-157649 denied the employer's request to reopen, concluding that the employer failed to show good cause for its failure to appear. The order reasoned that the employer's failure to appear was the result of a "deliberate business decision" to receive business-related mail at two different addresses and check one on an "infrequent basis," which were neither an excusable mistakes nor factors beyond the employer's reasonable control. Order No. 20-UI-157649 at 4.

However, the record shows that the employer had good cause for failing to appear at the November 3, 2020 hearing. The employer's owner checked its PO Box once a week, typically on Mondays, from which it may be inferred that he checked its PO Box on or about Monday October 26, 2020, and that the notice of hearing was not there. Because the hearing notice was mailed on October 20, 2020 and had not

yet reached the employer's PO Box by October 26, 2020, it also may be inferred that it took until at least October 27, 2020 (7 days) to be delivered, which was an unusually long time and a factor beyond the employer's reasonable control.¹ The employer checked its PO Box again on November 3, 2010, and could not reasonably have anticipated receiving a document after October 26, 2020 scheduling a hearing on or before November 3, 2020, particularly when there is no evidence that the employer was even aware that claimant had requested a hearing. For that reason, although it may have been within the employer's reasonable control to check its PO Box more often than once per week, its failure to do so was an excusable mistake.

The employer therefore established good cause for its failure to attend the November 3, 2020 hearing. Accordingly, its request to reopen the hearing is allowed, and the employer is entitled to a hearing on the merits of decision # 92225.

DECISION: Order No. 20-UI-157649 is set aside, and this matter remanded for further proceedings consistent with this order.

S. Alba and D. P. Hettle.

DATE of Service: January 13, 2021

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 20-UI-157649 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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¹ EAB takes notice of the generally cognizable fact that first class domestic mail sent through the U.S. Postal Service is estimated to take 1-3 business days after mailing to be delivered. See <https://www.usps.com/ship/first-class-mail.htm>



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.

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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