

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0170

Reversed & Remanded

PROCEDURAL HISTORY: On November 10, 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 June 28, 2020 (decision # 84935). Claimant filed a timely request for hearing. On December 9, 2020, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for December 23, 2020 at 9:30 a.m. On December 23, 2020, claimant failed to appear at the hearing, and ALJ Janzen issued Order No. 20-UI-158117, dismissing the hearing request due to claimant's failure to appear. On January 12, 2021, Order No. 20-UI-158117 became final without claimant having filed a timely request to reopen the hearing. On January 21, 2021, claimant filed a late request to reopen the hearing. ALJ Kangas considered claimant's request, and on February 19, 2021 issued Order No. 21-UI-161305, denying claimant's request to reopen the hearing as late. On March 9, 2021, claimant filed an application for review of Order No. 21-UI-161305 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). The additional evidence consists of the envelope containing the notice of the December 23, 2020 hearing that was sent to claimant and returned to OAH as undeliverable, marked as EAB Exhibit 1, and the envelope containing Order No. 21-UI-161305 that was returned to OAH as undeliverable, marked as EAB Exhibit 2. A copy of EAB Exhibits 1 and 2 have been provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 or 2 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 exhibits will remain in the record.

WRITTEN ARGUMENT: Claimant's argument contained information that was not part of the hearing record, and did not show that the additional evidence was relevant and material to EAB's determination because it did not set forth reasons that claimant filed a late request to reopen. Under OAR 471-041-0090(1)(B)(a) (May 13, 2019), EAB did not consider additional information contained in claimant's written argument when reaching this decision. *See* OAR 471-040-0041(4).

The parties may offer new information, such as the substance of claimant's written argument or the paystub documentation that claimant attached to their written argument, into evidence at the remand hearing. At that time, it will be determined if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing regarding documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties in advance of the hearing at their addresses as shown on the certificate of mailing for the notice of hearing.

FINDINGS OF FACT: (1) On December 9, 2020, OAH served on the parties notice of the hearing scheduled for December 23, 2020. On December 16, 2020, OAH received claimant's copy of the notice of hearing, returned as undeliverable. EAB Exhibit 1. On December 23, 2020, after claimant failed to appear at the scheduled hearing, ALJ Janzen issued Order No. 20-UI-158117, dismissing claimant's hearing request.

(2) Order No. 20-UI-158117 stated, "If you did not appear at the hearing, you may request to reopen the hearing. These requests . . . should be filed . . . within 20 days of when the order from the hearing you missed was mailed, or else show good cause to extend the period[.]" Order No. 20-UI-158117 at 2. Claimant filed a request to reopen the December 23, 2020 hearing on January 21, 2021, 29 days after Order No. 20-UI-158117 was mailed.

(3) Order No. 21-UI-161305 was mailed to the parties on February 19, 2021. On March 2, 2021, OAH received a copy of Order No. 21-UI-161305, returned as undeliverable. The party to whom the undeliverable copy of the order was originally addressed was not readily ascertainable. EAB Exhibit 2.

CONCLUSIONS AND REASONS: Order No. 21-UI-161305 is set aside and the matter is remanded for a hearing on whether claimant's late request to reopen the December 23, 2020 should be allowed, and if so, whether the hearing should be reopened.

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).

Because claimant did not file their request to reopen the hearing within 20 days of December 23, 2020, claimant must, under OAR 471-040-0041, show that they had good cause for failing to request reopening of the hearing by the timely filing deadline, and that they filed the reopen request within seven days after the circumstances that prevented them from filing the request timely ceased. On their request to reopen, claimant did not offer any explanation for why they did not file the request within 20 days of December 23, 2020. However, because the original notice of hearing was not delivered to

claimant, and because the record suggests that claimant may not have received a copy of Order No. 21-UI-161305, it is reasonable to infer that claimant may also not have received a copy of Order No. 20-UI-158117, and may therefore not have known either that they missed the scheduled hearing or the deadline by which to file a request to reopen it.

On remand, inquiry should be made as to whether claimant ever received copies of the original notice of hearing, Order No. 20-UI-158117, or Order 21-UI-161305, and if so, when they received them. Inquiry should be further directed as to whether claimant had notice of either the hearing scheduled for December 23, 2020 or the timely filing deadline to request a reopening of that hearing; and if so, why they failed, respectively, to appear at the hearing and to meet the timely filing deadline to reopen the hearing. The record should also be developed as to whether claimant's January 21, 2021 late request to reopen was filed within the seven-day reasonable time period after the circumstances that prevented them from filing a timely request to reopen ceased to exist. The ALJ should also ask any other questions that develop in the course of conducting the hearing.

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 a sufficiently developed record 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 or not claimant had good cause to file a late request to reopen the December 23rd hearing, Order No. 18-UI-113242 is reversed, and this matter is remanded for development of the record.

This matter is being remanded only for a hearing on whether or not claimant had good cause to file a late request to reopen. If claimant can prove that they had good cause for filing the request late, claimant must then prove that they had good cause for missing the December 23rd hearing and therefore is entitled to reopen that hearing. If the ALJ finds that claimant both had good cause to file the late request to reopen the hearing and had good cause to reopen the hearing, the parties should be permitted to offer evidence on the merits of decision # 84935.

DECISION: Order No. 21-UI-161305 is set aside, and this matter remanded for further proceedings consistent with this order.

S. Alba and D. P. Hettle.

DATE of Service: March 18, 2021

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-161305 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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