

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0207

Reversed
Request to Reopen Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On November 30, 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 August 2, 2020 (decision # 105707). Claimant filed a timely request for hearing. On January 14, 2021, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for January 27, 2021 at 9:30 a.m. On January 27, 2021, claimant failed to appear for the hearing, and ALJ Logan issued Order No. 21-UI-159869 dismissing claimant's request for hearing for failing to appear. On February 2, 2021, claimant filed a timely request to reopen the January 27, 2021 hearing. ALJ S. Lee reviewed the request, and on March 15, 2021 issued Order No. 21-UI-162683 denying the request. On March 24, 2021, claimant filed an application for review of Order No. 21-UI-162683 with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant submitted a written argument with their application for review and another written argument on March 30, 2021. EAB did not consider claimant's arguments 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: (1) On November 30, 2020, the Department mailed decision # 105707 to claimant's address of record. Exhibit 1 at 1. Claimant's address of record began with the street number 10630.

(2) On December 29, 2020, OAH issued notice of a hearing on decision # 105707 scheduled for January 12, 2021. OAH mailed the notice of hearing to claimant's address of record, which began with the street number 10630. Exhibit 3 at 3.

(3) A hearing did not occur on January 12, 2021. On January 14, 2021, OAH issued notice of a hearing on decision # 105707 scheduled for January 27, 2021. OAH mailed the notice of hearing to an incorrect

address that began with the street number 10631, instead of 10630. January 14, 2021 Notice of Hearing Record Document at 3.

CONCLUSIONS AND REASONS: The claimant's request to reopen the hearing on decision # 105707 is allowed. Claimant is entitled to a hearing on the merits of that decision.

OAR 471-040-0015(1) provides that "notice of hearing setting forth the time, date, place, and issues(s) . . . shall be personally delivered or mailed . . . to parties . . . at their last known address as shown by the record of the Director." (Emphasis added). 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). Good cause also includes but is not limited to "[f]ailure to receive a document because the Employment Department or Office of Administrative hearings mailed it to an incorrect address despite having the correct address." OAR 471-040-0040(2)(a)(A). The party requesting reopening shall set forth the reason(s) for missing the hearing in a written statement, which OAH shall consider in determining whether good cause exists for failing to appear at the hearing. OAR 471-040-0040(3).

The order under review denied claimant's request to reopen, concluding that because claimant did not provide any information as to why they did not appear at the January 27, 2021 hearing, claimant failed to show good cause for missing the hearing. Order No. 21-UI-162683 at 2. It is true that claimant's request to reopen failed to comply with OAR 471-040-0040(3) by not setting forth in writing why claimant missed the hearing. Under ORS 657.275(2), however, EAB may address issues raised by the record, notwithstanding the scope of the issues raised by the parties, the arguments set forth in a party's application for review or the parties' written or oral arguments. Here, the record shows claimant lacked notice of the January 27, 2021 hearing because OAH did not mail notice of the January 27, 2021 hearing to claimant's last known address, but to an incorrect address. Claimant therefore did not receive notice of the January 27, 2021 hearing, which raises concerns that claimant was not afforded due process. Granting claimant's request to reopen therefore is appropriate.

Accordingly, claimant's request to reopen the hearing is granted, and claimant is entitled to a hearing on the merits of decision # 105707.

DECISION: Order No. 21-UI-162683 is set aside, as outlined above.

S. Alba and D. P. Hettle.

DATE of Service: April 1, 2021

NOTE: You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at courts.oregon.gov. Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

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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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