

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0225

Reversed & Remanded

PROCEDURAL HISTORY AND FINDINGS OF FACT: On December 30, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant's wages from Anthony Travel, Inc. were exempt from regular unemployment insurance because claimant worked for Anthony Travel as an independent contractor. Claimant filed a timely request for hearing. On March 15, 2021, ALJ Frank convened a hearing and issued Order No. 21-UI-162701, concluding that claimant withdrew his request for hearing and dismissing the request for that reason. On March 25, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

CONCLUSIONS AND REASONS: Order No. 21-UI-162701 is set aside and this matter remanded for a hearing on the merits of the December 30, 2020 administrative decision.

An administrative law judge may order that a request for hearing be dismissed upon request from the appellant to withdraw the request for hearing. OAR 471-040-0035(1) (August 1, 2004). The administrative law judge may also dismiss a request for hearing on their own motion if:

- (a) The appellant fails to file the request for hearing within the time allowed by statute or rule;
- (b) The appellant employer, under ORS 657.485, fails to set forth with the request for hearing the reason therefor;
- (c) The appellant fails to appear at the hearing at the time and place stated in the notice of hearing;
- (d) The request for hearing has been filed prior to the service of the decision or determination that is the subject of the request; or

(e) The request for hearing is made by a person not entitled to a hearing on the merits or is made with respect to a determination or decision of the Director or authorized representative with respect to which there is no lawful authority to request a hearing.

OAR 471-040-0035(3).

The order under review concluded that “claimant withdrew the request for hearing.” Order No. 21-UI-162701 at 1. The record does not support that conclusion. At hearing, the ALJ asked claimant if he wished to proceed with a hearing on the issue of whether wages should be added to his claim determination based on his work for Anthony Travel, Inc. Audio Record at 15:49. Claimant answered, “No,” but explained that he wanted the ALJ to consider other evidence regarding another matter related to his request for claim determination that was not the subject of the December 30, 2020 decision. Audio Record at 15:57. Claimant did not request or agree to withdraw his hearing request. Shortly before closing the hearing record, the ALJ nevertheless stated, “We’re going to call this a withdrawal, okay?” and ended the hearing. Audio Record at 18:42.

As discussed above, claimant did not request to withdraw his request for hearing. Rather, claimant declined to offer testimony on the matter before the ALJ and instead attempted to offer testimony on a matter over which the ALJ did not have jurisdiction. Because claimant did not ask to withdraw his request for hearing, the ALJ lacked the authority to dismiss claimant’s request for hearing under OAR 471-040-0035(1). Moreover, because none of the factual scenarios contemplated under OAR 471-040-0035(3) for an ALJ to dismiss a request for hearing on their own motion are relevant to the current matter, no basis existed for dismissing claimant’s request for hearing. On remand, the ALJ should permit claimant to offer testimony regarding the issue on appeal addressed by the December 30, 2020 administrative decision, and may exclude as irrelevant any testimony on issues not before the ALJ.

DECISION: Order No. 21-UI-162701 is set aside, and this matter remanded for further proceedings consistent with this order.

S. Alba and D. P. Hettle.

DATE of Service: April 6, 2021

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-162701 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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