

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0249

Affirmed
Request to Reopen Denied

PROCEDURAL HISTORY: On December 14, 2020, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was not entitled to receive PUA benefits effective February 2, 2020. Claimant filed a timely request for hearing. On January 15, 2021, the Office of Administrative Hearings (OAH) served notice of a hearing on January 29, 2021 at 10:45 a.m. On January 29, 2021, claimant failed to appear for the hearing, and ALJ Monroe issued Order No. 21-UI-160097 dismissing claimant’s request for hearing because claimant failed to appear. On February 17, 2021, claimant filed a timely request to reopen the January 29, 2021 hearing. ALJ Kangas reviewed the request, and on March 24, 2021 issued Order No. 21-UI-163308, denying the request and leaving Order No. 21-UI-160097 undisturbed. On April 3, 2021, claimant filed an application for review of Order No. 21-UI-163308 with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant’s written argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant’s reasonable control prevented them from offering the information with their request to reopen. Claimant asserted in their written argument to EAB that they failed to appear for the January 29, 2021 hearing because they “experienced unforeseeable and unanticipated loss of cellular phone service which prevented [them] from appearing at the phone hearing.” Claimant’s Written Argument. Claimant did not provide this information with the request to reopen the hearing that they filed on February 17, 2021. Nor does claimant’s argument show any reason why claimant did not include this explanation in their request to reopen for why they failed to appear at the hearing.

Not only did claimant fail to state in their request to reopen that they lost cellular phone service at the time of the hearing, this assertion is inconsistent with what they stated in their written argument, and therefore lacks credibility. Claimant stated in their request to reopen that they received the notice of hearing, “read the time and date and skimmed the rest of the page . . . I’ve never had to appear on phone for a hearing so I was unaware that I needed to call in. I was thinking I’d be called at that time.” Exhibit 5. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only

information received into the hearing record when reaching this decision and, and therefore did not consider claimant's assertion that they failed to appear at the hearing due to a loss of cellular phone service.

Order No. 21-UI-163308 denied claimant's request to reopen, reasoning that it was within claimant's reasonable control to read the instructions on the notice of hearing, which stated that at the time of the hearing, "you must call" and if the party requested a hearing and does not call at the time of the hearing, "the hearing will be dismissed." Order No. 21-UI-163308 at 2. The order further concluded that although claimant mistakenly believed the administrative law judge would call them at the time of hearing, that mistake was not an "excusable mistake" because it was not, for example, a due process issue, was not the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply. Order No. 21-UI-163308 at 3.

The record supports the order's conclusions and shows that claimant did not establish good cause for failing to appear at the January 29, 2021 hearing. Claimant read the time and date of the hearing on the notice of hearing. The underlined instruction that claimant must call at the time of the hearing immediately followed the date and time of the hearing. The warning that the hearing would be dismissed if claimant did not call at the time of the hearing was within the same numbered paragraph on the notice. That claimant "had never had to appear on phone for a hearing" does not show that it was beyond claimant's reasonable control to read and follow the instructions on the notice of hearing. And although claimant's failure to carefully read the notice of hearing and assumption that the administrative law judge would call them at the time of hearing were mistakes, they were not excusable mistakes because they did not, for example, raise a due process issue, and were not the result of inadequate notice, or the inability to follow directions despite substantial efforts to comply. Claimant's request to reopen the January 29, 2021 hearing therefore is denied. Order No. 21-UI-160097, which dismissed claimant's request for hearing, remains undisturbed.

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the order under review is **adopted**.

DECISION: Order No. 21-UI-163308 is affirmed.

S. Alba and D. P. Hettle.

DATE of Service: April 15, 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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You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



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 ໄດ້ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

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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