

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0299-R

Request for Reconsideration Allowed
EAB Decision 2021-EAB-0299 Adhered to on Reconsideration
No Disqualification

PROCEDURAL HISTORY: On December 4, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was disqualified from receiving unemployment insurance benefits from August 30, 2020 through November 28, 2020 (weeks 36-20 through 48-20) because claimant was unemployed due to a labor dispute that was in active progress (decision # 110910). Claimant filed a timely request for hearing. On March 11, 2021, ALJ Davis conducted a hearing, and on March 17, 2021 issued Order No. 21-UI-162836, reversing decision # 110910, and concluding that claimant was not unemployed due to a labor dispute that was in active progress and was therefore not disqualified from receiving benefits for the period of August 30, 2020 through March 6, 2021 (weeks 36-20 through 9-21). On April 6, 2021, the employer filed an application for review with the Employment Appeals Board (EAB). On May 13, 2021, EAB issued EAB Decision 2021-EAB-0299, affirming Order No. 21-UI-162836.

On May 11, 2021, before EAB issued EAB Decision 2021-EAB-0299, the employer filed a timely written argument by emailing the argument to EAB. However, the written argument was mistakenly identified by an email filter as a potentially threatening email, which delayed receipt of the email until after the deadline to file written argument had passed and EAB had issued EAB Decision 2021-EAB-0299. On May 20, 2021, the employer sent an email to EAB inquiring whether the written argument had been considered, which EAB construed as a timely request for reconsideration of EAB Decision 2021-EAB-0299. This decision is issued pursuant to EAB's authority under ORS 657.290(3).

CONCLUSIONS AND REASONS: Claimant's request for reconsideration is allowed. EAB Decision 2021-EAB-0299 is adhered to on reconsideration.

ORS 657.290(3) authorizes EAB to reconsider any previous decision of the Employment Appeals Board, including “the making of a new decision to the extent necessary and appropriate for the correction of previous error of fact or law.” “Any party may request reconsideration to correct an error of material fact or law, or to explain any unexplained inconsistency with Employment Department rule, or officially stated Employment Department position, or prior Employment Department practice.” OAR 471-041-0145(1) (May 13, 2019).

The employer filed a timely written argument. EAB’s decision to issue EAB Decision 2021-EAB-0299 without considering the employer’s written argument was error. The employer’s request for reconsideration is, therefore, allowed.

Order No. 21-UI-162836 reversed decision # 110910 by concluding that claimant was not unemployed due to a labor dispute that was in active progress and was therefore not disqualified from receiving unemployment insurance benefits on those grounds. EAB Decision 2021-EAB-0299, which affirmed Order No. 21-UI-162836, solely addressed the issue of whether claimant was unemployed due to a labor dispute in active progress. The employer’s written argument does not appear to disagree with the hearing order’s ruling. Rather, citing to information not contained in the record, the employer’s written argument contends that claimant was discharged for misconduct and should be disqualified from the receipt of benefits on that separate ground pursuant to ORS 657.176(2)(a).

EAB declines to address a work separation issue that is beyond the scope of the hearing notice, record, and order. The employer is free to express to the Department their position that claimant was discharged for misconduct and, should the Department issue an administrative decision on that issue, may thereafter request a hearing, and if necessary, review by EAB, on that work separation issue. Here, the issue before EAB was whether claimant was unemployed due to a labor dispute that was in active progress. The employer does not assert that EAB made an error of material fact or law, or any inconsistency with Department rule, officially stated Department position, or prior Department practice, in concluding that claimant was not unemployed due to a labor dispute that was in active progress and was therefore not disqualified from receiving benefits. Nor does the record otherwise show that EAB made an error of material fact or law, or any inconsistency with Department rule, officially stated Department position, or prior Department practice, in affirming Order No. 21-UI-162836. For these reasons, EAB Decision 2021-EAB-0299 is adhered to on reconsideration.

DECISION: The employer’s request for reconsideration is allowed. EAB Decision 2021-EAB-0299 is adhered to on reconsideration.

S. Alba and D. Hettle;
A. Steger-Bentz, not participating.

DATE of Service: June 11, 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 الإستئناف 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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