

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0313-R

Request for Reconsideration Allowed
EAB Decision 2021-EAB-0313 Adhered to on Reconsideration
Disqualification

PROCEDURAL HISTORY: On January 11, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit working for the employer without good cause and was disqualified from receiving unemployment insurance benefits effective December 29, 2019 (decision # 144959). Claimant filed a timely request for hearing. On April 9, 2021, ALJ Snyder conducted a hearing at which the employer failed to appear, and on April 16, 2021, issued Order No. 21-UI-165016, affirming decision # 144959. On April 20, 2021, claimant filed an application for review with the Employment Appeals Board (EAB). On May 26, 2021, EAB issued EAB Decision 2021-EAB-0313, affirming and adopting Order No. 21-UI-165016. On May 29, 2021, June 1, 2021, and June 11, 2021, claimant filed timely requests for reconsideration of EAB Decision 2021-EAB-0313. This decision is issued pursuant to EAB's authority under ORS 657.290(3).

FINDINGS OF FACT: (1) On April 20, 2021, claimant submitted a written argument to EAB with his application for review. The written argument stated the following: "I would like for EAB to review this case. 2020 has affected me severely due to COVID. I was not able to find a job due to the pandemic. My family and I were affected with COVID. Businesses were shutting down resulting in me not able to find a job." Claimant's April 20, 2021 written argument did not include a statement declaring that he provided a copy of his argument to the opposing party.

(2) On May 3, 2021, claimant sent a one-page fax cover page to EAB entitled, "Written Argument," but containing no written argument and no certification that claimant had sent a written argument to the opposing party.

(3) Claimant's May 29, 2021 request for reconsideration was submitted through a Department web form. The request asked EAB to reconsider EAB Decision 2021-EAB-0313 because EAB did not consider claimant's written argument, and asserted that claimant did provide a copy of his written argument to the opposing party on May 3, 2021. However, claimant's May 29, 2021 request for reconsideration did not include a statement that a copy of the request for reconsideration was provided to the opposing party.

(4) Claimant's June 1, 2021 request for reconsideration was sent by email to EAB. The request asked EAB to reconsider EAB Decision 2021-EAB-0313, asserting that EAB made an error by not considering claimant's written argument. Claimant stated in the request that EAB had told him that EAB received only a cover letter, and no written argument, on May 3, 2021. Claimant's June 1, 2021 request for reconsideration did not include a statement that a copy of that request was provided to the opposing party.

(5) Claimant's June 11, 2021 request for reconsideration included a statement that a copy of the request was provided to the opposing party.

CONCLUSIONS AND REASONS: Claimant's June 11, 2021 request for reconsideration is allowed. EAB Decision 2021-EAB-0313 is adhered to on reconsideration.

ORS 657.290(3) authorizes the Employment Appeals Board 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 request is subject to dismissal unless it includes a statement that a copy was provided to the other parties, and is filed on or before the 20th day after the decision sought to be reconsidered was mailed. OAR 471-041-0145(2).

Claimant's requests for reconsideration were filed within 20 days of the date EAB Decision 2021-EAB-0313 was mailed. Because the May 29, 2021 and June 1, 2021 requests for reconsideration of EAB 2021-EAB-0313 did not include a statement that a copy was provided to the other parties, EAB did not consider either request. However, had EAB considered those requests, the outcome of this decision would remain the same. Claimant asserted that EAB made an error by not considering claimant's written argument for EAB Decision 2021-EAB-0313. However, the written argument claimant submitted on April 20, 2021 did not include a statement declaring that claimant provided a copy of that argument to the opposing party or parties, and EAB did not err in refusing to consider the argument for that reason. On May 3, 2021, claimant submitted a fax cover sheet to EAB entitled, "Written Argument," but containing no written argument. Although claimant apparently intended to submit a written argument at that time, there was no argument attached. EAB therefore did not err by not considering a written argument from claimant.

In claimant's June 11, 2021 request for reconsideration of EAB Decision 2021-EAB-0313, claimant asserted that he believed his claim was denied "due to a misunderstanding" because he stated during the hearing that he voluntarily quit working for the employer "to spend time with [his] family," but the reason he quit work was because he "wanted to pursue" training as a certified nursing assistant (CNA), and his CNA course was later canceled due to the pandemic. To any extent that information was not part of the hearing record, claimant did not show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. To the extent may be asserting that the hearing proceedings were unfair, EAB reviewed the hearing record in its entirety, and it shows that the ALJ inquired fully into the matters at issue and gave all parties reasonable opportunity for a fair hearing as required by ORS

657.270(3) and (4) and OAR 471-040-0025(1) (August 1, 2004). Even if EAB had considered claimant's plan to pursue CNA training as the main reason he quit working for the employer, the outcome of EAB Decision 2021-EAB-0313 would have been the same because leaving work without good cause includes leaving work to attend school, unless required by law. OAR 471-030-0038(5)(b)(D) (September 22, 2020).

Claimant's request for reconsideration did not show that EAB Decision 2021-EAB-0313, which affirmed and adopted Order No. 21-UI-165016 and concluded that claimant quit work without good cause, contained any error of material fact or law, or was inconsistent with any Department rule, officially stated Department position or prior Department practices. EAB Decision 2021-EAB-0313 therefore is adhered to on reconsideration.

DECISION: The request for reconsideration filed on June 11, 2021 is allowed. EAB Decision 2021-EAB-0313 is adhered to on reconsideration.

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

DATE of Service: June 17, 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.

NOTE: This decision adheres to a decision that denies payment of your Unemployment Insurance (UI) benefits.

However, you may be eligible for Pandemic Unemployment Assistance (PUA) benefits for the period you are not eligible for other benefits as long as you are unable to work, unavailable for work, or unemployed due to the COVID-19 public health emergency. PUA is a new unemployment benefits program available through the Oregon Employment Department in response to the COVID-19 pandemic.

Visit <https://unemployment.oregon.gov> for more information, to apply for PUA, or to contact the Oregon Employment Department using the "Contact Us" form. You can also apply for PUA by calling 1-833-410-1004, but please be aware that the PUA staff cannot answer questions about this decision that denies payment of regular Unemployment Insurance (UI) benefits.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. 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 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.