

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0760

Affirmed
Request to Reopen Denied

PROCEDURAL HISTORY: On March 5, 2021, 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 January 24, 2021 based on the work separation (decision # 132528). On March 25, 2021, decision # 132528 became final without claimant having filed a request for hearing. On April 1, 2021, claimant filed a late request for hearing on decision # 132528. ALJ Kangas considered claimant's request, and on April 27, 2021, issued Order No. 21-UI-165585, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by May 11, 2021. On May 9, 2021, claimant filed a timely response to the appellant questionnaire. On June 2, 2021, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 21-UI-165585 was vacated and that a new hearing would be scheduled to determine whether claimant had good cause to file the late request for hearing and, if so, the merits of decision # 132528. Also on June 2, 2021, OAH mailed notice of a hearing scheduled for June 16, 2021 at 8:15 a.m. Pacific Time.

On June 16, 2021, claimant failed to appear at the hearing, and ALJ Ramey issued Order No. 21-UI-168827, dismissing claimant's request for hearing for failure to appear. On July 2, 2021, claimant filed a timely request to reopen the June 16, 2021 hearing. On August 19, 2021, OAH mailed notice of a hearing scheduled for September 3, 2021 to consider claimant's request to reopen the June 16, 2021 hearing and, if allowed, the merits of decision # 132528. On September 3, 2021, ALJ Logan conducted a hearing at which the employer did not appear, and issued Order No. 21-UI-174055, concluding that claimant did not have good cause to reopen the June 16, 2021 hearing and leaving Order No. 21-UI-168827 undisturbed. On September 22, 2021, claimant filed an application for review of Order No. 21-UI-174055 with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB did not consider claimant's written argument when reaching this decision because she did not include a statement declaring that she provided a copy of her argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019).

FINDINGS OF FACT: (1) On June 2, 2021, OAH mailed to claimant at her address of record on file with the Department notice of a hearing scheduled for June 16, 2021, at 8:15 a.m. Pacific Time. Claimant received the notice prior to June 16, 2021. Claimant lives in Ontario, Oregon, which is in the Mountain Standard Time Zone and one hour ahead of Pacific Time. Although claimant had lived in Ontario for five years, she testified she was neither aware that Ontario was in the Mountain Standard Time Zone or that there was more than one time zone in the State of Oregon.

(2) On June 16, 2021, claimant called into the hearing at 8:15 a.m. Mountain Standard Time / 7:15 a.m. Pacific Time. When after a period of time no one else joined the line, claimant called OAH and spoke with an individual who informed her of the one hour time difference between Mountain Standard Time and Pacific Time and that 8:15 a.m. Pacific Time was 9:15 a.m. Mountain Standard Time. Claimant failed to call into at the 8:15 a.m. Pacific Time hearing.

CONCLUSIONS AND REASON: Claimant's request to reopen is denied.

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). The party requesting reopening shall set forth the reason(s) for missing the hearing in a written statement, which the Office of Administrative Hearings (OAH) shall consider in determining whether good cause exists for failing to appear at the hearing. OAR 471-040-0040(3).

Claimant failed to appear at the June 16, 2021 hearing scheduled for 8:15 a.m. Pacific Time because she lived in the Mountain Standard Time Zone and she was unaware that there was more than one time zone in the State of Oregon and that Mountain Standard Time was one hour ahead of Pacific Time. However, appearing at the June 16, 2021 hearing was within claimant's reasonable control as she had timely received the notice of hearing specifying the start time as 8:15 a.m. *Pacific Time* and it was within her capability to understand what Pacific Time was, how it was different than Mountain Time, and the implications of the one hour time difference between Pacific Time and Mountain Standard Time in relation to the scheduled 8:15 a.m. Pacific Time hearing. *See* OAR 471-040-0040(2)(b)(B) ("Good cause does not include . . . [n]ot understanding the implications of a . . . notice when it is received."). As such, claimant has not met her burden to show that she failed to appear at the June 16, 2021 hearing due to circumstances beyond her reasonable control.

Although claimant's lack of awareness of the one hour time difference between Pacific Time and Mountain Standard Time was likely the result of a mistake on claimant's part, it was not an "excusable mistake" within the meaning of the administrative rules because it did not, for example, raise a due process issue, and was not the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply.

For these reasons, claimant's request to reopen the June 16, 2021 hearing is denied.

DECISION: Order No. 21-UI-174055 is affirmed.

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

DATE of Service: October 18, 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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