

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0310

Reversed & Remanded

PROCEDURAL HISTORY: On March 26, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit working for Home Place LLC without good cause and was disqualified from receiving unemployment insurance benefits effective May 24, 2020 (decision # 93127). Also on March 26, 2021, the Department served notice of an administrative decision concluding that claimant voluntarily quit working for Crown Ridge Construction LLC without good cause and was disqualified from receiving benefits effective January 3, 2021 (decision # 101859). On March 30, 2021, the Department served notice of an administrative decision, based in part on decisions # 93127 and 101859, concluding that claimant willfully made misrepresentations and failed to report material facts to obtain benefits, and assessing a \$985.00 overpayment of regular benefits, a \$3,000.00 overpayment of Federal Pandemic Unemployment Compensation (FPUC) benefits, a \$246.25 monetary penalty, and 22 weeks of penalty disqualification from future benefits. Claimant filed timely requests for hearing on decisions # 93127 and 101859 and the March 30, 2021 administrative decision.

On September 7, 2021, the Office of Administrative Hearings (OAH) served notices of hearings scheduled for September 24, 2021 at 8:15 a.m. on decision # 93127, for September 24, 2021 at 9:30 a.m. on decision # 101859, and for September 24, 2021 at 10:45 a.m. for the March 30, 2021 administrative decision. On September 24, 2021, claimant failed to appear for the hearings, and ALJ Scott issued Orders No. 21-UI-175555, 21-UI-175578, and 21-UI-175580, respectively dismissing the hearing requests on decisions # 93127 and 101859 and the March 30, 2021 administrative decision due to claimant's failure to appear.

On October 14, 2021, Orders No. 21-UI-175555, 21-UI-175578, and 21-UI-175580 became final without claimant having filed requests to reopen the September 24, 2021 the hearings with OAH or applications for review of Orders No. 21-UI-175555, 21-UI-175578, and 21-UI-175580 with the Employment Appeals Board (EAB). On November 4, 2021, claimant filed late requests to reopen the September 24, 2021 hearings. ALJ Kangas considered claimant's requests, and on February 16, 2022 issued Orders No. 22-UI-186600, 22-UI-186611, and 22-UI-186629, denying as late claimant's requests to reopen the September 24, 2021 hearings on decisions # 93127 and 101859 and the March 30, 2021

administrative decision, respectively. On March 3, 2022, claimant filed applications for review of Orders No. 22-UI-186600, 22-UI-186611, and 22-UI-186629 with EAB.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 22-UI-186600, 22-UI-186611, and 22-UI-186629. For case-tracking purposes, this decision is being issued in triplicate (EAB Decisions 2022-EAB-0309, 2022-EAB-0310, and 2022-EAB-0311).

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

The parties may offer new information, such as the information included in claimant's written argument, into evidence at the remand hearing. At that time, it will be determined if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing regarding documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties in advance of the hearing at their addresses as shown on the certificate of mailing for the notice of hearing.

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is claimant's late request to reopen the September 24, 2021 hearings, and has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the exhibit will remain in the record.

FINDING OF FACT: (1) Order No. 21-UI-175555 stated, "If you did not appear at the hearing, you may request to reopen the hearing. . . . Your request to reopen the hearing must . . . be filed within 20 days of when the order from the hearing you missed was mailed, or else show that factors or circumstances beyond your reasonable control prevented you from filing your reopen request within that time, in which case it must also show that you filed your hearing request within seven days of when those factors or circumstances ceased to exist." Order No. 21-UI-175555 at 2.

(2) Order No. 21-UI-175578 stated, "If you did not appear at the hearing, you may request to reopen the hearing. . . . Your request to reopen the hearing must . . . be filed within 20 days of when the order from the hearing you missed was mailed, or else show that factors or circumstances beyond your reasonable control prevented you from filing your reopen request within that time, in which case it must also show that you filed your hearing request within seven days of when those factors or circumstances ceased to exist." Order No. 21-UI-175578 at 2.

(3) Order No. 21-UI-175580 stated, "If you did not appear at the hearing, you may request to reopen the hearing. . . . Your request to reopen the hearing must . . . be filed within 20 days of when the order from the hearing you missed was mailed, or else show that factors or circumstances beyond your reasonable control prevented you from filing your reopen request within that time, in which case it must also show that you filed your hearing request within seven days of when those factors or circumstances ceased to exist." Order No. 21-UI-175580 at 2.

CONCLUSIONS AND REASONS: Orders No. 22-UI-186600, 22-UI-186611, and 22-UI-186629 are set aside and these matters are remanded for hearings on whether claimant's late requests to reopen the September 24, 2021 hearings should be allowed, whether the hearings should be reopened, and, if so, the merits of decisions # 93127 and 101859 and the March 30, 2021 administrative decision.

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. The period within which a party may request reopening may be extended if the party requesting reopening has good cause for failing to request reopening within the time allowed, and acts within a reasonable time. OAR 471-040-0041(1) (February 10, 2012). "Good cause" exists when an action, delay, or failure to act arises from an excusable mistake or from factors beyond an applicant's reasonable control. OAR 471-040-0041(2). "A reasonable time," is seven days after the circumstances that prevented a timely filing ceased to exist. OAR 471-040-0041(3). The party requesting reopening shall set forth the reason(s) for filing a late request to reopen in a written statement, which OAH shall consider in determining whether good cause exists for the late filing, and whether the party acted within a reasonable time. OAR 471-040-0041(4).

Claimant did not file their requests to reopen the hearings within 20 days of September 24, 2021, the date OAH issued Orders No. 21-UI-175555, 21-UI-175578, and 21-UI-175580. As a result, under OAR 471-040-0041, claimant must show: (1) that they had good cause for failing to request reopening of the hearings by the timely filing deadline, and (2) that they filed their requests to reopen within seven days after the circumstances that prevented them from filing the requests by the deadline had ceased. In their requests to reopen, claimant misstated the number of cases that were scheduled to be heard on September 24, 2021; stated that they did not know what or how many cases they needed to appeal; stated that they were "mailing all [their] paperwork" but did not include Orders No. 21-UI-175555, 21-UI-175578, or 21-UI-175580; and stated that they were "not sure" of the date those hearing orders were mailed. EAB Exhibit 1 at 1-5. It is possible to interpret this information to mean that claimant did not receive copies of Orders No. 21-UI-175555, 21-UI-175578, or 21-UI-175580, which could in turn mean that claimant did not have notice of the deadline to file requests to reopen the September 24, 2021 hearings. This may be sufficient to establish good cause to extend the period within which claimant could file their requests to reopen, so long as claimant acted within a "reasonable time" in filing the late requests to reopen on November 4, 2021. With respect to whether claimant had good cause for failing to appear at the September 24, 2021 hearings, claimant stated in their requests to reopen that they "could not afford [their] phone bill when they had a case to attend[.]" EAB Exhibit 1 at 1. This suggests that claimant may have had good cause for missing the September 24, 2021 hearings because a circumstance beyond claimant's reasonable control may have prevented claimant from attending the hearings.

On remand, inquiry should be made as to whether a circumstance beyond claimant's reasonable control caused them to file their requests to reopen late, such as if they failed to receive Orders No. 21-UI-175555, 21-UI-175578, or 21-UI-175580 in the mail. If so, the record should be developed as to whether claimant's November 4, 2021 late requests to reopen were filed within the seven-day "reasonable time" period after those circumstances ceased to exist. If the record on remand establishes that claimant's late requests to reopen should be allowed, inquiry should be made to determine whether claimant had good cause for failing to appear at the September 24, 2021 hearings, such as if problems with their telephone service constituted circumstances beyond their reasonable control that prevented them from appearing. If the record on remand establishes that the September 24, 2021 hearings should be reopened, the ALJ

should inquire as to the merits of decisions # 93127 and 101859 and the March 30, 2021 administrative decision.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure a sufficiently developed record into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary for a determination of whether claimant's late requests to reopen the September 24, 2021 hearings should be allowed, whether the hearings should be reopened, and, if so, the merits of decisions # 93127 and 101859 and the March 30, 2021 administrative decision, Orders No. 22-UI-186600, 22-UI-186611, and 22-UI-186629 are reversed, and these matters are remanded for development of the record.

DECISION: Orders No. 22-UI-186600, 22-UI-186611, and 22-UI-186629 are set aside, and these matters remanded for further proceedings consistent with this order.

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

DATE of Service: April 8, 2022

NOTE: The failure of any party to appear at the hearings on remand will not reinstate Orders No. 22-UI-186600, 22-UI-186611, and 22-UI-186629 or return these matter to EAB. Only timely applications for review of the subsequent orders will cause these matters 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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