

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0361

Affirmed
Late Request to Reopen Denied

PROCEDURAL HISTORY: On February 23, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct, disqualifying claimant from receiving unemployment insurance benefits effective August 30, 2020 (decision # 131518). Claimant filed a timely request for hearing. On March 24, 2021, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for April 7, 2021 at 10:45 a.m. On April 7, 2021, claimant failed to appear at the hearing, and ALJ Janzen issued Order No. 21-UI-164339, dismissing claimant's request for hearing for failure to appear. On April 27, 2021, Order No. 21-UI-164339 became final without claimant having filed a request to reopen the April 7, 2021 hearing. On November 14, 2021, claimant filed a late request to reopen the hearing. ALJ Kangas considered claimant's request, and on February 22, 2022 issued Order No. 22-UI-186985, denying the request and leaving Order No. 21-UI-164339 undisturbed. On March 14, 2022, claimant filed an application for review of Order No. 22-UI-186985 with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant submitted written arguments on March 16, 2022 and April 22, 2022. Claimant did not declare that he provided a copy of either argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The arguments also contained information that was not part of the hearing record, including information regarding the timing of claimant's request to reopen the April 7, 2021 hearing. However, claimant did not show that factors or circumstances beyond his reasonable control prevented him from offering that information into the hearing record with his request to reopen, as required by OAR 471-041-0090 (February 10, 2012). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Order No. 21-UI-164339 stated "If you did not appear at the hearing, you may request to reopen the hearing. . . . Your request to reopen must: 1) be in writing; 2) show that factors or circumstances beyond your reasonable control caused you to miss the hearing; and 3) either 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-164339 at 2. Order No. 21-UI-164339 further stated, “Include all information regarding your reopen request that you want the Administrative Law Judge to consider when deciding whether to grant your reopen request.” Order No. 21-UI-164339 at 2.

(2) At some time after claimant failed to appear for the April 7, 2021 hearing, claimant learned of changes in the law that he believed would retroactively make him eligible to receive unemployment insurance benefits. Claimant also believed that the employer would provide information to show that claimant was not discharged for misconduct. Exhibit 5.

CONCLUSIONS AND REASONS: Claimant’s late 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. 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 filed a request to reopen the April 7, 2021 hearing on November 14, 2021. Because claimant filed the request more than 20 days after April 7, 2021, the request was late. Claimant provided a written statement to OAH with the late request to reopen that set forth the reasons for filing a late request.

Based on the reasons claimant provided for the late filing in his reopen request, claimant did not show good cause to file a late request to reopen the April 7, 2021 hearing. Claimant asserted that there had been a “change in the rules” that would affect his eligibility for benefits. Exhibit 5. Claimant may be referring to the Oregon temporary rules applicable to COVID-19 situations. However, the Oregon temporary rules were already in effect when claimant’s work separation occurred.¹ Thus, to the extent claimant delayed his reopen request based on his belief that there had been a change in the law after the hearing that might change the result in his case, claimant’s failure to file the reopen request was due to a mistake. However, it was 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.

Claimant also alleged in his reopen request that the employer would “clarify” that the reason they discharged claimant was not due to misconduct. Exhibit 5. This assertion does not show that claimant’s reopen request was late due to a factor beyond his reasonable control or an excusable mistake. Claimant

¹ See OAR 471-030-0070(2)(a) (effective March 8, 2020 through September 12, 2020); OAR 471-030-0070(1) (effective March 8, 2020 through September 12, 2020).

had the opportunity to preserve his right to a hearing, and the information the parties would provide during that hearing, by filing a timely request to reopen. Absent a showing of good cause, claimant's late request to reopen is denied.

DECISION: Order No. 22-UI-186985 is affirmed.

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

DATE of Service: April 27, 2022

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 desisyong ito.

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 ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄໍາຕັດສິນນີ້.

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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