

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0586

Affirmed
Request to Reopen Denied

PROCEDURAL HISTORY: On October 29, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant failed to register for work in accordance with the Department's rules and was therefore disqualified from receiving unemployment insurance benefits effective October 10, 2021 through October 16, 2021 (week 41-21) and until the reason for the denial had ended. Claimant filed a timely request for hearing. On November 23, 2021, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for 1:30 p.m. on December 8, 2021. On December 8, 2021, claimant failed to appear at the hearing, and ALJ Janzen issued Order No. 21-UI-181435, dismissing claimant's request for hearing due to his failure to appear. On December 13, 2021, claimant filed a request to reopen the December 8, 2021 hearing. OAH considered the request and served a notice of hearing scheduled for April 29, 2022. On April 29, 2022, ALJ Janzen conducted a hearing and on May 3, 2022 issued Order No. 22-UI-192786, concluding that claimant did not have good cause to reopen the December 8, 2021 hearing, and leaving Order No. 21-UI-181435 undisturbed. On May 19, 2022, claimant filed an application for review of Order No. 22-UI-192786 with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On October 29, 2021, the Employment Department mailed an administrative decision concluding that claimant did not register following the rules set by the Director. Claimant filed a timely request for hearing.

(2) On November 23, 2021, OAH mailed a notice of hearing to claimant at his address of record for a hearing at 1:30 p.m. on December 8, 2021. Exhibit 1.

(3) On December 8, 2021, OAH mailed Order No. 21-UI-181435 dismissing claimant's request for hearing because claimant failed to appear at the hearing. Exhibit 2.

(4) Claimant's address of record is a residence he shares with his partner. Claimant's partner customarily checks the mail and puts the mail in a stack on a table at the residence. From November 23, 2021 through December 10 or 11, 2021, claimant did not check the stack of mail and assumed that his partner would tell him if he had mail. Audio Record at 16:40-17:30, 19:55 to 20:33.

(5) On or about December 10 or 11, 2021, claimant discovered Order No. 21-UI-181435 dismissing his request for hearing for failing to appear at the hearing. Claimant later discovered the notice of hearing that had been mailed to claimant on November 23, 2021. Audio Record at 20:46-21:48.

(6) Claimant filed a request to reopen the hearing on December 13, 2021.

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. "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 filed a request to reopen the hearing on the administrative decision issued October 29, 2021 on December 13, 2021. The deadline to file a request to reopen the hearing was December 28, 2021. Therefore, claimant's request was timely. Claimant did not open his mail in time to discover the notice of hearing for the December 8, 2021 hearing and did not become aware of the hearing until on or about December 11, 2021. Claimant's partner customarily collected the mail and stacked the mail on the table. Claimant's reliance on his partner to hand him his mail was not reasonable, given claimant had access to the stack of mail on his table, had appealed the administrative decision, and failed to check the mail on his table between November 23, 2021 and December 11, 2021. Claimant's failure to open his mail in a timely manner was within his reasonable control and was not an excusable mistake. To the extent claimant argues he did not know that appealing the administrative decision meant there would be a hearing and that he could expect a notice of hearing date to be sent to him in the mail, claimant's mistake was not an "excusable mistake" within the meaning of the administrative rules. Claimant's mistake 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. Accordingly, claimant failed to establish good cause for failing to appear at the December 8, 2021 hearing, and claimant's request to reopen is denied.

DECISION: Order No. 22-UI-192786 is affirmed.

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

DATE of Service: June 7, 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 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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