

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0714

Affirmed
Late Request to Reopen Denied

PROCEDURAL HISTORY: On March 18, 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 December 20, 2020 (decision # 70155).¹ Claimant filed a timely request for hearing. On April 5, 2021, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for April 19, 2021 at 9:30 a.m. On April 19, 2021, claimant failed to appear at the hearing, and on April 20, 2021, ALJ Schmidt issued Order No. 21-UI-165181, dismissing claimant's request for hearing due to their failure to appear. On May 10, 2021, Order No. 21-UI-165181 became final without claimant having filed a request to reopen the hearing. On May 13, 2021, claimant filed a late request to reopen the April 19, 2021 hearing. ALJ Kangas considered claimant's request, and on June 2, 2022 issued Order No. 22-UI-195192, denying the request. On June 22, 2022, claimant filed an application for review of Order No. 22-UI-195192 with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant did not declare 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 argument also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented them from offering the information into the hearing record with their request to reopen the April 19, 2021 hearing, as required by OAR 471-040-0041(4). EAB considered only information received into the hearing record when reaching this decision. *See* ORS 657.275(2); OAR 471-041-0090 (May 13, 2019).

FINDINGS OF FACT: (1) On April 9, 2021, while claimant's timely hearing request on decision # 70155 was pending, the Department issued decision # 73108 addressing claimant's work separation

¹ Decision # 70155 vacated and replaced decision # 105215, which had been issued by the Department on March 12, 2021.

from a different employer, and concluded that claimant was not disqualified from receiving benefits based on that work separation.²

(2) After reviewing decision # 73108, claimant believed that the decision nullified the effect of decision # 70155 and, as a result, decided not to attend the April 19, 2021 hearing.

(3) Order No. 21-UI-165181, issued on April 20, 2021, 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-165181 at 2.

(4) On May 13, 2021, claimant called the Department to ask why they had not received benefits on their claim. Claimant was advised that the result in decision # 73108 did not nullify decision # 70155. Claimant then requested to reopen their April 19, 2021 hearing.

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 did not file their May 13, 2021 request to reopen the April 19, 2021 hearing within 20 days of the April 20, 2021 date that OAH issued Order No. 21-UI-165181, which was May 10, 2021. As a result, claimant must show that they had good cause for failing to request that the hearing be reopened within the 20-day timeframe, and that they acted within a reasonable time thereafter in making their late request.

Claimant did not show good cause for having filed a late request to reopen the April 19, 2021 hearing. In their late request to reopen, claimant indicated that “[t]he way [decision # 73108] was worded” caused claimant confusion over the effect of decision # 73108. Exhibit 5 at 1. Based on this confusion, claimant incorrectly believed that decision # 73108 had nullified decision # 70155 and “[claimant] did not attend the [April 19, 2021] hearing that was scheduled” on decision # 70155 as a result. Exhibit 5 at 1.

² EAB has taken notice of the date that decision # 73108 was issued, which is contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). Any party that objects to our taking notice of this information 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 noticed fact will remain in the record.

However, this explanation speaks only to claimant's reasons for their failure to appear at the April 19, 2021 hearing. As noted above, claimant did not timely file their request to reopen within the 20-day timely filing period, May 10, 2021, and claimant therefore was required to show that they had good cause for their failure to meet this deadline, such that the deadline should be extended.

Here, claimant offered no explanation, nor does the record show any other good cause basis, for their failure to request reopening of the April 19, 2021 hearing within the 20-day period allowed for doing so. While it can be inferred that claimant's failure to meet the 20-day deadline was a mistake resulting from claimant's continued confusion over the effect of decision # 73108, any such mistake was not an excusable mistake within the meaning of the administrative rules. Specifically, claimant made no showing, nor does the record suggest, that claimant's mistake resulted, for example, from a due process issue, from inadequate notice, from reasonable reliance on another, or from the inability to follow directions despite substantial efforts to comply.

Because claimant failed to show good cause for their late request to reopen, claimant's late request to reopen the April 19, 2021 hearing is denied.

DECISION: Order No. 22-UI-195192 is affirmed.

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

DATE of Service: July 28, 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 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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