

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0910

Reversed
Late Request to Reopen Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On July 19, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant had failed to register for work in accordance with the Department's rules and therefore was ineligible to receive unemployment insurance benefits for the week of June 27, 2021 through July 3, 2021 (week 26-21) and until the reason for the denial had ended. Claimant filed a timely request for hearing. On August 5, 2021, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for August 18, 2021 at 10:45 a.m. On August 18, 2021, claimant failed to appear for the hearing, and ALJ Murdock issued Order No. 21-UI-172873, dismissing claimant's request for hearing for failure to appear. On September 7, 2021, Order No. 21-UI-172873 became final without claimant having filed a request to reopen the hearing. On April 11, 2022, claimant filed a late request to reopen the hearing. On August 8, 2022, ALJ Wardlow conducted a hearing, and on August 11, 2022 issued Order No. 22-UI-200348, dismissing claimant's late request to reopen the hearing and leaving the July 19, 2021 administrative decision undisturbed. On August 26, 2022, claimant filed an application for review of Order No. 22-UI-200348 with the Employment Appeals Board (EAB).

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of an address change report from OAH, 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.

WRITTEN ARGUMENT: Claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant's argument to the extent it was based on the record.

FINDINGS OF FACT: (1) On August 2, 2021, claimant updated his address of record with the Department from an address in New York, New York to an address in Whitehall, New York. EAB Exhibit 1.

(2) OAH mailed the August 5, 2021 notice of the August 18, 2021 hearing to claimant's previous address in New York, New York. Exhibit 1. As a result, claimant did not receive the notice of hearing, which was returned to OAH as undeliverable. Exhibit 5 at 21. Claimant therefore did not appear at the hearing.

(3) Order No. 21-UI-172873 also was mailed to claimant's previous address in New York, New York. Exhibit 2. As a result, claimant did not receive the order, which was returned to OAH as undeliverable. Exhibit 4 at 10. Claimant therefore did not file a request to reopen the August 18, 2021 hearing before Order No. 21-UI-172873 became final on September 7, 2021.

(4) After having heard nothing about his claim for "months," claimant eventually "assumed that [he] must've missed another thing in the mail," and on April 11, 2022 filed a late request to reopen the August 18, 2021 hearing. Audio Record at 18:45.

CONCLUSIONS AND REASONS: Claimant's late request to reopen the August 18, 2021 hearing is allowed and this matter remanded for a hearing on the merits of the July 19, 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. "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 OAH shall consider in determining whether good cause exists for failing to appear at the hearing. OAR 471-040-0040(3).

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).

The request to reopen the August 18, 2021 hearing was due by September 7, 2021, and claimant's April 11, 2022 request to reopen the hearing was late. At hearing, claimant testified that he believed he also had filed a timely request to reopen the hearing in August 2021 after having received a copy of Order No. 21-UI-172873. Audio Record at 11:32 to 12:07. Claimant also testified that he called the Department in August 2021 after receiving "a letter saying that [he] missed a hearing," and that the Department advised him to file a reopen request. Audio Record at 15:40. Had claimant actually

submitted a request to reopen in August 2021, the request would have been timely. However, the record does not show that he actually did so.

In his April 11, 2022 request to reopen, claimant stated that in addition to not having received the notice of hearing, he also was not aware of the original mailing date of the order dismissing his request for hearing because he “did not receive that in the mail either.” Exhibit 3 at 1. Additionally, the record shows that claimant’s copy of that order was returned as undeliverable. Exhibit 4 at 10. In light of this evidence, claimant likely did not receive a copy of Order No. 21-UI-172873. Because claimant also had not received the notice of hearing, it is reasonable to conclude that claimant was not, in August 2021, aware that his request for hearing had been dismissed due to his failure to appear. Claimant would have had no reason to file a request to reopen if he was not aware that his request for hearing had been dismissed. The record therefore does not show that claimant filed a timely reopen request in August 2021. It shows only that claimant filed the April 11, 2022 reopen request after having heard nothing about his claim for some time, assuming that he must have missed a piece of mail.

However, claimant had good cause for filing his request to reopen the August 18, 2021 hearing late, and filed the request within a reasonable time. Claimant was not aware of the hearing or Order No. 21-UI-172873 because OAH mailed the notice of hearing and the order to claimant’s previous address, despite claimant having updated his address with the Department. Claimant therefore failed to file a timely request to reopen due to factors beyond his reasonable control. Those factors only ceased when he filed his reopen request in April 2022, which therefore was within seven days after the circumstances that prevented a timely filing ceased to exist.

The record further shows that claimant had good cause for failing to appear at the August 18, 2021 hearing. Claimant did not receive the notice of hearing because OAH mailed the notice to claimant’s previous address despite claimant having updated his address with the Department a few days prior, which was a factor beyond claimant’s reasonable control. Claimant therefore neither knew nor had reason to know that a hearing had been scheduled, and failed to appear at the hearing due to a factor beyond his reasonable control.

For the above reasons, claimant’s late request to reopen the August 18, 2021 hearing is allowed and this matter remanded for a hearing on the merits of the July 19, 2021 administrative decision.

DECISION: Order No. 22-UI-200348 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: November 9, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-200348 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter 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 ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

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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