

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0995

Affirmed
No Disqualification

PROCEDURAL HISTORY: On January 21, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving unemployment insurance benefits effective December 26, 2021 (decision # 141422). Claimant filed a timely request for hearing. On September 9, 2022, ALJ Chiller conducted a hearing, and on September 13, 2022 issued Order No. 22-UI-202570, reversing decision # 141422 by concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving benefits based on the work separation. On September 29, 2022, the employer filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: The employer's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond the employer's reasonable control prevented them 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 the employer's argument to the extent it was based on the record.

In their argument, the employer states that the ALJ should have rescheduled the hearing to allow claimant's direct supervisor to attend the hearing. Written Argument at 1. At the September 9, 2022 hearing, prior to the ALJ taking any evidence, the ALJ asked the witness for the employer whether he was expecting any other witnesses or representatives to call in to the hearing. Audio Record at 10:59. The witness for the employer replied:

To be honest with you, no. I didn't even know this hearing was scheduled. I'm, I'm driving cross country. I tried to call and re-schedule it when the house sitter called me Sunday. And said it was a letter from the unemployment office and [*indiscernible*] she gave me the information. So I'm really not prepared for this. I don't have any of my documentation with me. And, but nobody from the unemployment office responded to

my phone call,¹ voicemails, the message I left, or the email that I sent to ‘em. So I’m sitting on the side of the highway dialing in today.

Audio Record at 11:04 through 11:39. Thereafter, the ALJ advised that she would go forward with taking testimony but would check with the employer’s witness at the end of the hearing to check if he felt comfortable going forward or discussing options. Audio Record at 11:53. However, a few moments later, the ALJ clarified that she would go forward with the hearing and would address any document or materials from the employer witness’s file at the end of the hearing “if I believe that there are documents or files that I need.” Audio Record at 16:48. At the end of the hearing, the ALJ concluded the hearing without addressing rescheduling the hearing or the matter of the employer witness’s file.

The block-quoted statement of the employer’s witness recited above is construed as a request to postpone or to continue the September 9, 2022 hearing, and the ALJ’s clarifying comment and act of concluding the hearing without addressing the matter is considered to be a ruling denying the request.

To the extent the employer’s argument contends that the ALJ erred in denying the employer’s request to postpone or continue the hearing, the employer’s contention lacks merit. To make a successful request for a postponement or continuance, the employer was required to show that: (1) the circumstances causing the employer to make the request were beyond the employer’s reasonable control; and (2) failure to grant the postponement or continuance would result in an undue hardship to the employer. *See* OAR 471-040-0021; OAR 471-040-0026 (effective August 1, 2004).

Although the fact the employer’s witness was driving cross country was inconvenient, the employer did not show why a different witness could not have appeared at the hearing on the employer’s behalf, or that it was beyond the employer’s reasonable control to have a different employer witness do so. Nor did the employer establish that failing to receive a postponement or continuance represented an undue burden to the employer. This is because it was not evident from the employer’s request how the employer would have been prejudiced by not having another witness appear or by the employer’s witness who was present not having his documentation with him. The employer asserts in their written argument that they were prejudiced because claimant’s direct supervisor was unable to attend the hearing and would have refuted aspects of claimant’s testimony. Written Argument at 1. However, claimant’s direct supervisor’s inability attend the hearing was asserted for the first time in the employer’s written argument. Because the employer did not show that factors or circumstances beyond the employer’s reasonable control prevented them from offering this during the hearing, EAB will not consider that information. Accordingly, the employer failed to show that their request for a postponement or a continuance should have been granted

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the order under review is **adopted**.

DECISION: Order No. 22-UI-202570 is affirmed.

¹ Regarding claimant’s efforts to call the Department to reschedule the hearing, the ALJ stated, “I did see a note in our file that, um, someone from the Employment Department did try to return your phone call. But I’m not sure if it was a wrong number because the note just said that they received a busy signal.” Audio Record at 11:41. Requests for a postponement or a continuance should be directed to the Office of Administrative Hearings (OAH), although notifying both OAH and the Department of such a request is a good practice.

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

DATE of Service: December 13, 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 ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

Arabic

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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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