

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-1096

Order No. 22-UI-205591 Reversed
Late Request to Reopen Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On November 29, 2021, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was not eligible to receive PUA benefits effective December 27, 2020. Claimant filed a timely request for hearing. On January 21, 2022, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for January 31, 2022. On January 31, 2022, claimant failed to appear for the hearing, and ALJ Frank issued Order No. 22-UI-185253, dismissing claimant's request for hearing because of his failure to appear. On February 9, 2022, claimant filed a timely request to reopen the January 31, 2022 hearing. On April 1, 2022, OAH served notice of a hearing scheduled for April 26, 2022. On April 26, 2022, claimant failed to appear for the hearing, and on April 27, 2022 ALJ Scott issued Order No. 22-UI-192310, dismissing claimant's request for hearing due to his failure to appear and leaving the November 29, 2021 PUA determination undisturbed. On May 17, 2022, Order No. 22-UI-192310 became final without claimant having filed a request to reopen the April 26, 2022 hearing. On May 18, 2022, claimant filed a late request to reopen the April 26, 2022 hearing. On October 13, 2022, ALJ Frank conducted a hearing, and on October 20, 2022 issued Order No. 22-UI-205591, concluding that claimant did not have good cause to file the late request to reopen the April 26, 2022 hearing, and leaving Order No. 22-UI-192310 undisturbed. On November 2, 2022, claimant filed an application for review 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 is claimant's request to reopen the January 31, 2022 hearing 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(s) will remain in the record.

FINDINGS OF FACT: (1) On January 21, 2022, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for January 31, 2022.

(2) Claimant did not attend the January 31, 2022 hearing because he was experiencing homelessness at the time, had lost his notice of hearing, could not remember the time of the hearing or how to call in to participate, and did not have a working phone or reliable means of transportation with which to contact OAH. EAB Exhibit 1.

(3) From February 28, 2022 through September 12, 2022, claimant was incarcerated. On April 1, 2022, OAH served notice of a hearing scheduled for April 26, 2022. On April 26, 2022, claimant failed to appear at the hearing scheduled for that day because he was in jail and unable to participate in the hearing. Claimant believed that his girlfriend would notify OAH that he would be unable to attend the April 26, 2022 hearing, but she was unable to do so because of issues with her phone.

(4) While in jail, claimant did not have the ability to send faxes and did not have control over when outgoing mail would be postmarked. On May 17, 2022, claimant signed a request to reopen the April 26, 2022 hearing and gave it to his girlfriend to file that day. Claimant's girlfriend filed claimant's request to reopen by fax on May 18, 2022.

CONCLUSIONS AND REASONS: Claimant had good cause for filing the late request to reopen the April 26, 2022 hearing. Claimant had good cause to reopen the January 31, 2022 hearing, and is entitled to a hearing on the merits of the November 29, 2021 PUA determination.

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).

"Good cause" to reopen the hearing 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). 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).

Late Request to Reopen the April 26, 2022 hearing. The request to reopen the April 26, 2022 hearing was due by May 17, 2022. Because claimant did not submit his request until May 18, 2022, the request was late. The order under review concluded that claimant did not have good cause to reopen the April 26, 2022 hearing because claimant did not prove that his *girlfriend* had good cause for filing his request to reopen late. Order No. 22-UI-205591 at 3. However, the girlfriend's late filing of claimant's request was a factor beyond claimant's reasonable control, regardless of whether the girlfriend personally had good cause for delaying the filing.

Here, claimant signed his request to reopen the hearing of April 26, 2022 on May 17, 2022, the last day to timely file it. Because he was in jail, he had no means by which he could ensure that the request would be filed with OAH that day, and he had to rely on some other person to timely file it on his behalf. Once claimant submitted the request to his girlfriend to file on May 17, 2022, her failure to file it until the following day was beyond claimant's reasonable control. Because the circumstances causing the delay ended within one day, claimant's late request was made within a "reasonable time." Claimant therefore had good cause to file the late request to reopen the April 26, 2022 hearing.

Further, claimant had good cause to reopen the April 26, 2022 hearing. Claimant failed to appear at that hearing because he was in jail. He had arranged for his girlfriend to request a postponement of the hearing on his behalf, but his girlfriend did not appear at the hearing due to problems with her phone. Each of these factors was beyond claimant's reasonable control. Claimant therefore had good cause for failing to appear at the April 26, 2022 hearing.

Request to Reopen the January 31, 2022 hearing. Claimant filed a timely request to reopen the January 31, 2022 hearing. The record on review is sufficient to decide this issue without further hearing on the matter.

Claimant's request to reopen the January 31, 2022 hearing stated that he missed that hearing because he did not remember the time or contact details from the notice of hearing, which he did not have access to as he was "unhoused" at the time. EAB Exhibit 1 at 1. Claimant further explained that he had no means of contacting OAH because he did not have a reliable phone and he had no transportation. EAB Exhibit 1 at 1. These factors caused claimant's failure to appear at the hearing were beyond his reasonable control. Therefore, claimant had good cause for failing to appear at the January 31, 2022 hearing, claimant's request to reopen that hearing is allowed, and claimant is entitled to a hearing on the merits of the November 29, 2021 administrative decision.

The matter is remanded for a hearing on the merits of the determination that claimant is not eligible for PUA.

DECISION: Orders No. 22-UI-205591, 22-UI-192310, and 22-UI-185253 are set aside, and this matter is remanded for further proceedings consistent with this order.

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

DATE of Service: January 6, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 22-UI-205591, 22-UI-192310, or 22-UI-185253, 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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