

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0205

Reversed
Request to Reopen Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On August 3, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not able to work during the weeks including July 10, 2022 through July 30, 2022 (weeks 28-22 through 30-22) and therefore was ineligible to receive unemployment insurance benefits for those weeks and until the reason for the denial ended (decision # 142550). Claimant filed a timely request for hearing. On October 6, 2022, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for October 21, 2022 at 10:45 a.m. On October 21, 2022, claimant failed to appear for the hearing, and ALJ Blam issued Order No. 22-UI-205669, dismissing claimant's request for hearing due to claimant's failure to appear and leaving decision # 142550 undisturbed.

On October 24, 2022, claimant filed a request to reopen the hearing. On February 1, 2023, ALJ Blam conducted a hearing that was interpreted in Spanish, and on February 6, 2023 issued Order No. 23-UI-214982, concluding that claimant did not have good cause to reopen the October 21, 2022 hearing and leaving Order No. 22-UI-205669 undisturbed. On February 10, 2023, claimant filed an application for review of Order No. 23-UI-214982 with the Employment Appeals Board (EAB).

HISTORIA PROCESAL: *El 3 de agosto de 2022, el Departamento de Empleo de Oregon (el Departamento) mandó por correo una decisión administrativa concluyendo que el reclamante no estaba capaz de trabajar desde el 10 de julio de 2022 hasta el 30 de julio de 2022 (semanas 28-22 hasta 30-22) y por esa razón no era elegible de recibir beneficios de desempleo para esas semanas y hasta que terminó la razón para la denegación (decisión # 142550). El reclamante presentó una solicitud de audiencia oportuna. El 6 de octubre de 2022, la Oficina de Audiencias Administrativas (OAH) mandó por correo notificación de una audiencia prevista para el 21 de octubre de 2022 a las 10:45 de la mañana. El reclamante no se presentó a la audiencia y por esa razón, la jueza administrativa (ALJ) Blam emitió la Orden No. 22-UI-205669, rechazando la solicitud de audiencia del reclamante y dejando la decisión # 142550 sin cambios.*

El 24 de octubre de 2022, el reclamante presentó una solicitud para reabrir la audiencia. El primer de febrero de 2023, la ALJ Blam llevó a cabo una audiencia que fue interpretada al español, y el 6 de febrero de 2023 emitió la Orden No. 23-UI-214982 negando la solicitud para reabrir la audiencia y dejando la Orden No. 22-UI-205669 sin cambios. El 10 de febrero de 2023, el reclamante presentó una solicitud de revisión de la Orden No. 23-UI-214982 con la Junta de Apelaciones de Empleo (EAB).

FINDINGS OF FACT: (1) At all times relevant to this decision, claimant had limited proficiency in English.

(2) On October 6, 2022, OAH served notice of a hearing scheduled for October 21, 2022 at 10:45 a.m. OAH mailed the notice to claimant's address of record. Claimant received the notice within a few days of when it was mailed.

(3) About a week prior to October 21, 2022, claimant received notice of an MRI appointment that his general practitioner's office scheduled for him. The MRI, which was ordered in relation to an ongoing medical concern that claimant had been experiencing, was scheduled for October 21, 2022 at 10:15 a.m. The appointment was expected to last two hours.

(4) On October 20, 2022, claimant contacted OAH in an attempt to reschedule the hearing. Claimant left a message for OAH, but did not receive a response. Claimant did not contact OAH earlier to reschedule because his phone had been disconnected and because he had been in pain due to his medical concern.

(5) Around 8:00 a.m. on October 21, 2022, claimant attempted to contact OAH again to reschedule the hearing scheduled for later that morning, but was not able to get through to them. Claimant subsequently failed to appear at the hearing because of the conflicting MRI appointment.

(6) On October 24, 2022, claimant contacted the Department and requested to reschedule the hearing he had missed. One of the representatives to whom claimant spoke that day told him that there would be "another hearing," and that claimant should wait for the Department to send "another letter" to him so that he would have "something to appeal." Transcript at 10.

(7) On November 11, 2022, claimant filed an application for review of Order No. 22-UI-205669 with EAB, which was construed as a motion to reopen the October 21, 2022 hearing.¹

(8) On November 15, 2022, the Department forwarded to OAH a note regarding claimant's October 24, 2022 phone call requesting to reschedule the hearing he had missed.

CONCLUSIONS AND REASONS: Claimant's request to reopen the October 21, 2022 hearing is allowed, and a hearing on the merits of decision # 142550 is required.

CONCLUSIONES Y RAZONES: *Se permite la solicitud del reclamante para reabrir la audiencia del 21 de octubre de 2022, y se requiere una audiencia sobre los méritos de la decisión # 142550.*

¹ See OAR 471-041-0060(4) (May 13, 2019).

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 failed to appear at the October 21, 2022 hearing due to a medical appointment that his general practitioner had scheduled for him about a week prior. Due to the combination of a disconnected phone and pain he had been experiencing, claimant was unable to speak with OAH prior to the date of the hearing in order to request that it be rescheduled. Additionally, claimant attempted to contact OAH both the day before the hearing and a few hours prior to the start of the hearing on October 21, 2022, but was unable to get through to them to reschedule the hearing. When viewed as a whole, these circumstances show that claimant’s failure to appear was the result of factors beyond his reasonable control.

Further, while the order under review found that claimant did not file the reopen request until November 11, 2022, which would have made the request untimely by one day, the record shows that claimant filed a timely request to reopen the hearing. Order No. 23-UI-214982 at 2. Claimant contacted the Department on October 24, 2022 and requested to reschedule the hearing. Although claimant’s request on October 24, 2022 was not in writing, the Department memorialized it in writing and eventually forwarded it to OAH on November 15, 2022. *See Exhibit 1.* Thus, claimant made a timely request to reopen the hearing, but the Department did not forward that request until after the timely filing deadline had passed.

For the above reasons, claimant filed a timely request to reopen the October 21, 2022 hearing, and had good cause to reopen the hearing. Claimant’s request is therefore allowed, and claimant is entitled to a hearing on the merits of decision # 142550.

DECISION: Order No. 23-UI-214982 is set aside, and this matter remanded for further proceedings consistent with this order. *La Orden de la Audiencia 23-UI-214982 se pone a un lado, y esta materia se remite para otros procedimientos constantes con esta orden.*

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

DATE of Service: March 23, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-214982 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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NOTA: La falta de cualquier parte de presentarse a la audiencia sobre la remisión no reinstalará la Orden de la Audiencia No. 23-UI-214982 ni devolverá esta orden a la EAB. Solamente una aplicación oportuna para revisión de la orden subsiguiente de la nueva audiencia volverá este caso a la EAB.

NOTA: Usted puede apelar esta decisión presentando una solicitud de revisión judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) dentro de los 30 días siguientes a la fecha de notificación indicada arriba. Vea ORS 657.282. Para obtener formularios e información, puede escribir a la Corte de Apelaciones de Oregon, Sección de Registros (Oregon Court of Appeals/Records Section), 1163 State Street, Salem, Oregon 97310 o visite el sitio web en courts.oregon.gov. En este sitio web, hay información disponible en español.

Por favor, ayúdenos mejorar nuestros servicios completando un formulario de encuesta sobre nuestro servicio de atención al cliente. Para llenar este formulario, puede visitar <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. Puede acceder a la encuesta usando una computadora, tableta, o teléfono inteligente. Si no puede llenar el formulario sobre el internet, puede comunicarse con nuestra oficina para una copia impresa de la encuesta.



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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