

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0253

Reversed
Request to Reopen Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On November 5, 2021, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was not entitled to PUA benefits effective March 8, 2020. Claimant filed a timely request for hearing. On September 1, 2022, the Office of Administrative Hearings (OAH) served a notice of hearing scheduled for September 13, 2022 at 7:00 a.m. On September 13, 2022, claimant failed to appear for the hearing, and ALJ Scott issued Order No. 22-UI-202571 dismissing the hearing request due to claimant's failure to appear, and leaving the November 5, 2021 PUA determination undisturbed. On September 21, 2022, claimant filed a timely request to reopen. ALJ Kangas considered claimant's request, and on February 13, 2023 issued Order No. 23-UI-215790, denying claimant's request to reopen and leaving Order No. 22-UI-202571 undisturbed. On February 24, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On November 5, 2021, the Department mailed the November 5, 2021 administrative decision to claimant's address on file with the Department. On November 19, 2021, claimant timely requested a hearing on the November 5, 2021 administrative decision. Exhibit 2 at 2.

(2) After claimant requested a hearing on the administrative decision, they received nothing back from OAH and heard nothing about the status of their appeal. Exhibit 5 at 1.

(3) On September 1, 2022, OAH mailed notice of a hearing on the November 5, 2021 administrative decision, scheduled for September 13, 2022, to claimant's address on file with OAH.

(4) Claimant's mailbox was located down the street from their house. Exhibit 5 at 1. As of September 2022, claimant typically only checked their mail a couple of times per month. Exhibit 5 at 1. On September 6, 2022, claimant checked their mail. Exhibit 5 at 1. At that time, notice of the hearing scheduled for September 13, 2022 had not yet been delivered to claimant's mailbox. Exhibit 5 at 1.

(5) On September 13, 2022, claimant failed to appear for the hearing because they had not received the notice and did not know a hearing was scheduled for that date.

(6) At some point after claimant checked their mail on September 6, 2022 but before they checked their mail on September 14, 2022, the U.S. Postal Service delivered the notice of hearing to claimant's mailbox. On September 14, 2022, claimant checked their mail, read the notice of hearing, learned that a hearing on their appeal had been scheduled for the previous day, and realized they had missed the hearing. Exhibit 5 at 1.

(7) On September 21, 2022, claimant filed a timely request to reopen the September 13, 2022 hearing.

CONCLUSIONS AND REASONS: Claimant's request to reopen is allowed. Order No. 23-UI-215790 is reversed, Order No. 22-UI-202571 is cancelled, and a hearing on the merits of the November 5, 2021 administrative decision is required.

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).

The order under review concluded that claimant did not establish good cause to reopen the September 13, 2022 hearing because they failed to show that an excusable mistake or factors beyond their reasonable control prevented them from appearing at the hearing. Order No. 23-UI-215790 at 2-3. The record on direct review does not support this conclusion.

Claimant requested a hearing on November 19, 2021. Thereafter, claimant received nothing back from OAH and heard nothing about the status of their appeal. OAH mailed the notice of hearing scheduling a hearing on the November 5, 2021 PUA determination almost a year after claimant made their hearing request. Under these circumstances, claimant had no reason to expect a hearing on their request would be scheduled for a date in September 2022. Therefore, it was an excusable mistake for claimant to fail to check their mail with sufficient frequency to receive the notice of hearing that was delivered between when they checked their mail on September 6, 2022 and when they checked their mail on September 14, 2022. Due to claimant's excusable mistake, Claimant did not learn of the existence of the September 13, 2022 hearing until they checked their mail on September 14, 2022. Claimant therefore failed to appear for the September 13, 2022 hearing because, as a result of their excusable mistake, they were not aware the hearing was scheduled to take place that day. Thus, claimant's failure to appear arose from an excusable mistake and claimant established good cause to reopen the hearing.

Accordingly, claimant's request to reopen is allowed, and claimant is entitled to a hearing on the merits of the November 5, 2021 administrative decision. Claimant is reminded to carefully monitor their mailbox for the hearing notice that OAH will mail scheduling a future hearing in this matter.

DECISION: Order No. 23-UI-215790 is set aside, Order No. 22-UI-202571 is cancelled, and a hearing on the merits of the November 5, 2021 administrative decision is required.

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

DATE of Service: March 24, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-215790 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
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