

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0270

Reversed & Remanded

PROCEDURAL HISTORY: On September 28, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing an overpayment of \$11,275 in Pandemic Unemployment Assistance (PUA), \$12,900 in Federal Pandemic Unemployment Compensation (FPUC), and a \$3,626.25 monetary penalty. Claimant filed a timely request for hearing. On December 7, 2022, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for December 21, 2022. On December 21, 2022, claimant failed to appear for the hearing, and ALJ Janzen issued Order No. 22-UI-210596, dismissing claimant's request for hearing due to their failure to appear. On January 10, 2023, Order No. 22-UI-210596 became final without claimant having filed a request to reopen the December 21, 2022 hearing or an application for review with the Employment Appeals Board (EAB). On January 12, 2023, claimant filed a late request to reopen the hearing of December 21, 2022. ALJ Kangas considered claimant's request, and on February 24, 2023, issued Order No. 23-UI-217087, denying claimant's request to reopen and leaving Order No. 22-UI-210596 undisturbed. On February 28, 2023, 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 written statement provided with their application for review and has been marked 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 December 7, 2022, OAH mailed notice of a hearing scheduled for December 21, 2022 to claimant's address of record with OAH.

(2) On December 21, 2022, claimant did not appear at the scheduled hearing. That day, OAH mailed Order No. 22-UI-210596 to claimant's address of record with OAH. It stated, "If you did not appear at the hearing, you may request to reopen the hearing." Order No. 22-UI-210596 at 2. It further stated, in

relevant part, that a request to reopen must “either be filed within 20 days of when the order from the hearing you missed was mailed, or else show good cause to extend the period to request reopening of your case[.]”

(3) On January 12, 2023, claimant called OAH “to ask about the status of [a] reopen request that [claimant] filed a week prior to [the] call.” Order No. 23-UI-217087 at 2. Claimant also emailed OAH that day with a similar inquiry. Exhibit 5 at 1. OAH considered claimant’s email to be a late reopening request, as they had not received any prior reopening request form claimant.

(4) Claimant included with their application for review a written statement that they were unable to attend the December 21, 2022 hearing because they had “been suffering from depression and anxiety since the passing of [their mother-in-law].” EAB Exhibit 1 at 1.

CONCLUSIONS AND REASONS: Order No. 23-UI-217087 is set aside and the matter remanded for further development of the record as to whether claimant had good cause to file their late request to reopen the hearing of December 21, 2022, and if so, whether good cause exists to reopen the hearing.

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).

The request to reopen the December 21, 2022 hearing was due by January 10, 2023. Because claimant did not submit their request until January 12, 2023, the request was late. The order under review concluded that claimant may have had good cause for filing the late request to reopen because claimant might have attempted to file a request to reopen, prior to the January 10, 2023 deadline, that was not received by OAH. Order No. 23-UI-217087 at 2. The record supports this conclusion. Additionally, claimant has provided evidence that suggests other factors outside of claimant’s reasonable control, namely their mental health condition, may also have prevented timely filing of the request to reopen. Therefore, the record should be further developed as to whether good cause exists to extend the deadline for timely filing of the request to reopen.

The order under review further concluded that claimant did not show good cause for reopening because his request did not describe circumstances beyond his reasonable control or an excusable mistake that prevented him from attending the hearing. Order No. 23-UI-217087 at 3. Claimant has subsequently offered additional evidence that may explain why his request did not contain this information, and that such circumstances may have existed. EAB Exhibit 1 at 1. Therefore, if good cause is found to allow the late request to reopen, the record should be further developed to determine whether claimant had good cause to reopen the December 21, 2022 hearing. OAH considered claimant's January 12, 2023 email inquiry about the status of their appeal to be a late request for reopening, though it is not apparent from the record that claimant intended their email to be considered as such. This may account for the lack of explanation in that email as to why the request was filed late or why claimant failed to appear at the December 21, 2022 hearing. Additionally, as the initial request to reopen that claimant may have submitted was never received by OAH, it is unknown whether the request contained other evidence that explained why claimant failed to appear at the hearing. Moreover, claimant's newly submitted evidence regarding their mental health condition was offered to explain their absence from the hearing and should be considered in determining whether claimant had good cause for their failure to appear. Therefore, on remand, the record should be further developed as to why claimant failed to appear at the December 21, 2022 hearing to determine whether good cause exists to reopen the hearing.

DECISION: Order No. 23-UI-217087 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: March 30, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-217087 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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