

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0364

Reversed & Remanded

PROCEDURAL HISTORY: On December 1, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause and was disqualified from receiving unemployment insurance benefits effective October 24, 2021 (decision # 171212). Claimant filed a timely request for hearing. On March 3, 2022, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for March 16, 2022. On March 16, 2022, claimant failed to appear for the hearing and ALJ Blam-Linville issued Order No. 22-UI-188906, dismissing claimant's request for hearing for failure to appear, and leaving decision # 171212 undisturbed. On April 5, 2022, Order No. 22-UI-188906 became final without claimant having filed a request to reopen the hearing or an application for review with the Employment Appeals Board (EAB). On February 27, 2023 claimant filed a request to reopen the March 16, 2022 hearing. ALJ Kangas considered the request, and on March 21, 2023 issued order 23-UI-219649 dismissing claimant's request to reopen as late without a showing of good cause and leaving Order No. 22-UI-188906 undisturbed. On March 24, 2023, claimant filed an application for review with 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 March 16, 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 will remain in the record.

WRITTEN ARGUMENT: Claimant's March 24, 2023 and April 17, 2023 arguments contained information that was not part of the record on direct review, and did not show that factors or circumstances beyond claimant's reasonable control prevented them from offering the information into the hearing record with their request to reopen the March 16, 2022 hearing, as required under OAR 471-040-0040(3)(February 10, 2012). Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into the hearing record when reaching this decision.

The parties may offer new information such the information within these written arguments into evidence at the remand hearing. At that time, it will be determined if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing regarding documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties in advance of the hearing at their addresses as shown on the certificate of mailing for the notice of hearing.

FINDINGS OF FACT: (1) On March 3, 2022, OAH mailed notice of a hearing scheduled for March 16, 2022, to claimant’s address of record on file with the Department.

(2) On March 16, 2022, Order No. 22-UI-188906 was mailed to claimant’s address of record on file with OAH. It stated, “If you did not appear at the hearing, you may request to reopen the hearing...your request to reopen the hearing must...be filed within 20 days of when the order from the hearing you missed was mailed, or else show that factors or circumstances beyond your reasonable control prevented you from filing your request within that time, in which case it must also show that you filed your hearing request within seven days of when those factors or circumstance ceased to exist.” Order No. 22-UI-188906 at 2.

CONCLUSION AND REASONS: Order No. 23-UI-219649 is set aside, and this matter remanded for a hearing on whether claimant’s late request to reopen the March 16, 2022 hearing should be allowed, whether the hearing should be reopened, and, if so, the merits of decision # 171212.

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).

The request to reopen the March 16, 2022 hearing was due by April 5, 2022. Because claimant did not submit their request to reopen until February 27, 2023, the request was late. The order under review concluded that claimant did not show good cause for filing the late request to reopen because “The appellant did not provide any information why [claimant] filed [their] reopen request late.” Order No. 23-UI-219649 at 3. However, in claimant’s request to reopen, they assert that, “Requests for appeals have been filed by email and thru web form back in January 2021 however ... no response or knowledge provided by the State of Oregon.” EAB Exhibit 1 at 1. Claimant’s statement suggests that they may have not received notice of the March 16, 2022 hearing or Order No. 22-UI-188906. If claimant did not receive Order No. 22-UI-188906, this could mean that claimant did not have notice of the deadline to file a request to reopen the March 16, 2023 hearing. This may be sufficient to establish good cause to extend the period within which claimant could file their request to reopen, so long as claimant acted within a reasonable time in filing the late request to reopen. Further, if claimant did not receive the

notice of hearing sent on March 3, 2022, they may have had good cause for missing the March 16, 2023 hearing because a circumstance beyond claimant's reasonable control may have prevented them from attending the hearing.

On remand, the ALJ should inquire as to whether a circumstance beyond claimant's reasonable control prevented them from filing their request to reopen late, such as if they failed to receive Order No. 22-UI-188906 in the mail. If so, the record should be developed as to whether claimant's February 27, 2023 late request to reopen was filed within a seven day "reasonable time" after the circumstance that prevent claimant from timely filing ceased to exist. If the record on remand shows that claimant's late request to reopen should be allowed, the ALJ should inquire whether claimant had good cause for failing to appear at the March 16, 2022 hearing, such as if claimant failed to receive the notice of hearing, or claimant reasonably believed he rescheduled the hearing date before the hearing occurred. If the record on remand establishes that the March 16, 2022 hearing should be reopened, the ALJ should further inquire as to the merits of decision # 171212.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary for a determination of whether claimant's late request to reopen the March 16, 2022 hearing should be allowed, whether the hearing should be reopened, and if so, the merits of decision #171212, Order No. 23-UI-219649 is reversed, and this matter is remanded for further development of the record.

DECISION: Order No. 23-UI-219649 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: April 28, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-219649 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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