

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0375**

*Reversed*  
*Request to Reopen Allowed*  
*Merits Hearing Required*

**PROCEDURAL HISTORY:** On May 26, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer with good cause and was not disqualified from receiving benefits based on the work separation (decision # 152819). The employer filed a timely request for hearing. On September 19, 2022, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for September 26, 2022. On September 26, 2022, the employer failed to appear for the hearing, and ALJ Sachet-Rung issued Order No. 22-UI-203553, dismissing the employer's request for hearing for failure to appear. On October 14, 2022, the employer filed a timely request to reopen the September 26, 2022 hearing. On March 22, 2023, ALJ Adamson conducted a hearing, and on March 24, 2023 issued Order No. 23-UI-220082, denying the employer's request to reopen the September 26, 2022 hearing. On March 30, 2023, the employer filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** The employer did not declare that they provided a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond the employer's reasonable control prevented them from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

**FINDINGS OF FACT:** (1) On September 19, 2022, OAH served notice of a hearing scheduled for September 26, 2022. OAH mailed the notice to the employer's address of record, which was the correct address for the employer at the time. The employer checked for mail at that address, which is a post office box, once a day.

(2) The employer's copy of the notice of hearing was not returned as undeliverable, and the employer had not been having trouble receiving their mail at that time. However, the employer never received the notice of hearing. This caused them to be unaware that a hearing had been scheduled. As a result, the

employer did not appear at the September 26, 2022 hearing.

(3) On October 14, 2022, the employer filed their request to reopen the September 26, 2022 hearing, which was within 20 days of the date that Order No. 22-UI-203553 was mailed. In their reopen request, the employer explained that they failed to appear at the hearing because they did not receive the September 19, 2022 notice of hearing.

**CONCLUSIONS AND REASONS:** The employer's request to reopen the September 26, 2022 hearing is allowed, and a hearing on the merits of decision # 152819 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 employer failed to appear at the September 26, 2022 hearing because they never received the notice of hearing, and as a result were not aware that it had been scheduled. The order under review found to the contrary, stating that "[d]ocuments sent through the United States Postal Service are presumed to have been received by the addressee, subject to evidence to the contrary." Order No. 23-UI-220082 at 3. The order under review found that because the employer "provided no circumstantial evidence, such as information about its mail handling procedures, to overcome that presumption," the employer did not "establish that the notice was not delivered." Order No. 23-UI-220082 at 3. The record does not support these findings.

The order under review did not cite to authority to support the presumption upon which its findings rely. Presumably, the order was invoking ORS 40.135(1)(q), which states that there is a presumption that a letter duly directed and mailed was received in the regular course of the mail. However, the record contains evidence sufficient to rebut the presumption that the employer received the notice of hearing in the regular course of mail, because the employer stated in their request to reopen that they did not receive it, and the employer's witness explicitly testified under oath that the employer never received it. Audio Record at 10:10.

There is no first-hand evidence in the record to show that the notice of hearing was ever delivered to the employer, and the employer's testimony that they never received it is the only first-hand evidence that speaks to that point, and is corroborated by the employer's statement in their request to reopen that they did not receive the notice. The statute does not require a party to provide "circumstantial evidence" to support their first-hand evidence in order to prove their assertions. Because the employer's first-hand evidence that they did not receive the notice is the only evidence that directly speaks to their non-receipt of the notice of hearing, the record shows that the employer did not receive the notice, and the facts have been found accordingly.

Further, because the employer did not receive the notice of hearing, their failure to appear at the September 26, 2022 hearing was due to a factor beyond their reasonable control, and the employer therefore had good cause for failing to appear. The employer also filed their reopen request within 20 days after Order No. 22-UI-203553 was mailed, and the request contained a written explanation of why the employer failed to appear at the September 26, 2022 hearing. The employer's request for a reopening therefore is allowed, and a hearing on the merits of decision # 152819 is required.

**DECISION:** Order No. 23-UI-220082 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:** May 8, 2023

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-220082 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**

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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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