

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0504**

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

**PROCEDURAL HISTORY:** On September 19, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was disqualified from receiving unemployment insurance benefits effective August 14, 2022 (decision # 105755). Claimant filed a timely request for hearing. On October 24, 2022, the Office of Administrative Hearings (OAH) served a notice of hearing scheduled for November 3, 2022 at 10:45 a.m. On November 3, 2022, claimant failed to appear for the hearing, and ALJ Lewis issued Order No. 22-UI-206599 dismissing the hearing request due to claimant's failure to appear, and leaving decision # 105755 undisturbed. On November 21, 2022, claimant filed a timely request to reopen. On April 12, 2023, ALJ Lewis conducted a hearing at which the employer failed to appear, and on April 13, 2023 issued Order No. 23-UI-222040, denying claimant's request to reopen and leaving Order No. 22-UI-206599 undisturbed. On May 1, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant did not declare that he provided a copy of his 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 claimant's reasonable control prevented him 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) Claimant's sister had a severe cardiovascular condition and lived in the Philippines. At some point in 2021, claimant planned a trip to the Philippines to visit his ill sister. Claimant was scheduled to be out of the country on the trip beginning October 23, 2022 until November 6, 2022.

(2) On September 19, 2022, the Department issued decision # 105755, which concluded that claimant had voluntarily quit work without good cause and was disqualified from receiving benefits. On September 30, 2022, claimant filed a request for hearing on decision # 105755.

(3) In early to mid-October 2022, claimant's sister suffered a stroke. On October 23, 2022, claimant left the country as planned on the trip to visit his sister. Claimant did not notify OAH that he would be away from the country, although he did notify the Department through his weekly certifications.

(4) On October 24, 2022, OAH mailed to claimant's address of record a notice of hearing scheduling the hearing on decision # 105755 for November 3, 2022. Claimant did not receive the notice of hearing because he was away from home visiting his sister.

(5) On November 3, 2022, claimant remained in the Philippines visiting his sister and failed to appear for the hearing scheduled for that day.

(6) On November 6, 2022, claimant returned home, checked his mail, and realized a hearing had occurred on November 3, 2022. On November 21, 2022, claimant filed a timely request to reopen the November 3, 2022 hearing.

**CONCLUSIONS AND REASONS:** Claimant's request to reopen is allowed. Order No. 23-UI-222040 is reversed, Order No. 22-UI-206599 is cancelled, and a hearing on the merits of decision # 105755 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 November 3, 2022 hearing because he failed to show that an excusable mistake or factors beyond his reasonable control prevented him from appearing at the hearing. Order No. 23-UI-222040 at 2-3. The record does not support the conclusion that claimant lacked good cause for failing to appear at the November 3, 2022 hearing.

The resolution of this case is controlled by case law. In *Bursell v. Employment Division*, 694 P.2d 558, 71 Or. App. 729 (1985), the Department (then known as the Employment Division) issued an administrative decision denying the claimant benefits on November 10, 1983. The claimant requested a hearing on November 14, 1983. On or about November 29, 1983 until December 6, 1983, the claimant was on an out-of-town trip searching for a job. On November 29, 1983, a notice of hearing, which scheduled a hearing for the morning of December 6, 1983, was mailed to the claimant's address of record. The claimant failed to appear for the December 6, 1983 hearing. He failed to do so because he did not receive the notice of hearing until he returned from his trip on the afternoon of December 6. The

claimant moved to reopen the hearing he missed, the ALJ (then known as a referee) denied the motion, and EAB affirmed. *Bursell* at 559.

The Oregon Court of Appeals reversed. The Court noted that only seven days had elapsed between the mailing date of the notice of hearing and the date set for the hearing and that the claimant was out of the area during that time period. The Court further noted that the “primary purpose of the expedited hearing process is to assist the unemployed worker” and reasoned that allowing “the expedited timing [to] itself bar even an opportunity for a hearing would produce an incongruous result.” From there, the court stated:

We conclude that, given the exceptionally short time period at issue, it was not unreasonable for claimant to initiate a brief out-of-town job search without anticipating both that a notice of hearing would arrive in his brief absence and that the hearing would be set within the short time before his return. We hold that, as a matter of law, claimant has established good cause for failing to appear at the hearing.

*Bursell* at 560. In the course of reaching this result, the Court acknowledged that the claimant “could have notified the agency that he would be out of town seeking work for a given period” but attached no significance to the fact the claimant had failed to do so. *Bursell* at 560.

The facts of *Bursell* are substantially similar to the facts presented here. In *Bursell*, the claimant requested a hearing on November 14, left for a brief trip on or about November 29, was mailed a notice of hearing (he did not receive) on November 29 scheduling a hearing only seven days later, and failed to appear because he did not return home until after the scheduled time of the hearing. Here, claimant requested a hearing on September 30, 2022, left for a brief trip on October 23, 2022, was mailed a notice of hearing (he did not receive) on October 24, 2022, scheduling a hearing only ten days later, and failed to appear because he did not return home until after the scheduled time of the hearing. Just as in *Bursell*, it would produce an unfair result to allow, in this case, the ten-day expedited timing between the date the notice was mailed and the scheduled hearing to deprive claimant a hearing on the merits. Furthermore, as with the claimant’s brief out-of-town trip to search for work in *Bursell*, it was not unreasonable for claimant to take a trip (about two weeks compared to about one week in *Bursell*) to visit his ailing sister without anticipating both that the notice would arrive and that the hearing would be set within the time before his return. Nor is it material that claimant failed to notify OAH of his trip to visit his sister. This is so because the Court in *Bursell* acknowledged that the claimant in that case had failed to advise the agency of his trip, yet attached no significance to this fact, and arrived at the conclusion that the claimant had established good cause for failing to appear as a matter of law.

For these reasons, claimant established good cause to reopen the hearing. Claimant’s request to reopen is therefore allowed, Order No. 23-UI-222040 is reversed, Order No. 22-UI-206599 is cancelled and claimant is entitled to a hearing on the merits of the decision # 105755.<sup>1</sup>

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<sup>1</sup> Note that at the hearing on remand, claimant is entitled to the assistance of a representative. Review of the audio record of the April 12, 2023 hearing suggests claimant may have been nervous during the hearing and may struggle with English proficiency. Claimant may wish to designate that he be represented by his wife, who the record shows was initially present with claimant during the hearing, but then left the room. Audio Record at 8:37 through 9:20. Although any representative designated by claimant may not “coach” or provide claimant answers, such representative may conduct their own examination of witnesses, assert objections, and generally act on claimant’s behalf and in his interests.

**DECISION:** Order No. 23-UI-222040 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: June 1, 2023**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-222040 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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