

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0535

Reversed
Late Request to Reopen Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On June 24, 2010, 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 a \$8,760 overpayment of regular unemployment insurance (regular UI) benefits that claimant was required to repay to the Department, a \$1,314 monetary penalty, and a 52-week penalty disqualification from future benefits. A timely request for hearing was filed on claimant's behalf. On August 31, 2010, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for September 14, 2010. On September 14, 2010, ALJ Bear convened a hearing at which claimant failed to appear, and issued Order No. 10-UIB-23345-D, dismissing claimant's request for hearing due to his failure to appear. On October 4, 2010, Order No. 10-UIB-23345-D became final without claimant having filed a request to reopen with OAH or an application for review with the Employment Appeals Board (EAB).

On March 6, 2023, claimant filed a late request to reopen the September 14, 2010 hearing. On April 14, 2023, and continuing on April 21, 2023, ALJ Ramey conducted a hearing, and on April 28, 2023 issued Order No. 23-UI-223510, denying claimant's request to reopen the September 14, 2010 hearing as late without good cause, and leaving Order No. 10-UIB-23345-D undisturbed. On May 8, 2023, claimant filed an application for review of Order No. 23-UI-223510 with EAB.

WRITTEN ARGUMENT: EAB did not consider claimant's May 8, 2023 written argument when reaching this decision because he did not include a statement declaring 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). EAB considered claimant's May 23, 2023 argument in reaching this decision.

FINDINGS OF FACT: (1) On July 12, 2010, an unknown person called the Department impersonating claimant and requested a hearing on the June 24, 2010 administrative decision. Claimant was incarcerated and unaware of the administrative decision and the request for hearing.

(2) On August 31, 2010, OAH mailed notice of a hearing scheduled for September 14, 2010 to claimant's address of record on file with OAH. Claimant did not receive the notice because he was incarcerated.

(3) On September 14, 2010, claimant did not participate in the scheduled hearing because he was incarcerated and unaware that the hearing was taking place.

(4) On September 14, 2010, Order No. 10-UIB-23345-D was mailed to claimant's address of record on file with OAH. Claimant did not receive Order No. 10-UIB-23345-D because he was incarcerated.

(5) On September 23, 2022, after learning that his wages were being garnished as a result of the overpayment at issue in the June 24, 2010 administrative decision, claimant called the Department and "was advised to request a hearing at that point." April 14, 2023 Transcript at 26-27.

(6) On February 6, 2023, claimant called the Department and was given "the actual instructions and the walk-through process" on how to request reopening of the September 14, 2010 hearing. April 21, 2023 Transcript at 6. Claimant requested that the instructions be emailed to him.

(7) On February 7, 2023, the Department representative emailed claimant instructions on how to request reopening of the hearing. Claimant did not receive the email.

(8) On March 3, 2023, claimant contacted the Department to inquire why he had not received the emailed instructions he had requested. The email was re-sent and claimant received it that day.

(9) On March 6, 2023, claimant filed an online request to reopen the September 14, 2010 hearing.

CONCLUSIONS AND REASONS: Claimant's late request to reopen is allowed and this matter remanded for a hearing on the merits of the June 24, 2010 administrative decision.

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).

Claimant filed his request to reopen the September 14, 2010 hearing on March 6, 2023. The deadline to timely file the reopen request was within 20 days of the September 14, 2010 date that OAH issued Order No. 10-UIB-23345-D, which was October 4, 2010. Claimant therefore did not file his request to reopen by the timely filing deadline. As a result, under OAR 471-040-0041, claimant must show: (1) that he had good cause for failing to request reopening of the hearing by the timely filing deadline, and (2) that he filed his request to reopen within seven days after the circumstances that prevented him from filing the request by the deadline had ceased.

Claimant established good cause for failing to appear at the September 14, 2010 hearing, and for failing to file a request to reopen the hearing by October 4, 2010. Claimant's failure to appear at the hearing was due to his incarceration at the time it was held, and because he was unaware that a hearing had been requested or scheduled. Similarly, claimant's failure to file his request to reopen the hearing by October 4, 2010 was due to his failure to receive Order No. 10-UIB-23345-D because he was still incarcerated at that time. As claimant had not requested the hearing, he would have had no reason to anticipate that a hearing would be scheduled, or that an order dismissing the request for hearing would be mailed to him. The fact that claimant did not receive Order No. 10-UIB-23345-D and was unaware of its existence and his appeal rights prior to the reopening deadline was a factor beyond claimant's reasonable control.

While claimant first learned of the existence of Order No. 10-UIB-23345-D in September 2022, the circumstances that prevented him from filing the request to reopen did not cease until March 3, 2023. The record shows that on September 23, 2022, claimant was given general information about his right to a hearing regarding the June 24, 2010 administrative decision. However, the record does not show that claimant was advised then of how specifically to request reopening of the September 14, 2010 hearing and the time limits to do so. Similarly, during the February 6, 2023 telephone call with the Department, claimant testified that the representative instructed him on how to request reopening of the hearing and walked him through the process. April 21, 2023 Transcript at 6. However, claimant asked at that time that the instructions be emailed to him because he had apparently been "doing it wrong." April 21, 2023 Transcript at 6. This request demonstrated that claimant still did not fully understand his appeal rights, including the procedure and deadline for requesting reopening, as a result of having not received a written copy of this information which was included with Order No. 10-UIB-23345-D. Claimant's failure to receive the February 7, 2023 email from the Department containing this information, an additional factor outside claimant's reasonable control, meant that the circumstances preventing timely filing did not cease until March 3, 2023, when claimant received the re-sent email.

As claimant filed his request to reopen the September 14, 2010 hearing on March 6, 2023, he did so within a seven-day "reasonable time" of when the factors that prevented timely filing ceased. Accordingly, claimant has shown good cause for the late filing of the request to reopen, and good cause to reopen the September 14, 2010 hearing. Claimant's late request to reopen is allowed, and a hearing on the merits of the June 24, 2010 administrative decision is required.

DECISION: Order No. 23-UI-223510 is set aside, as outlined above.

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

DATE of Service: June 14, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-223510 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 ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

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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