

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0558

Reversed
Request to Reopen Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On January 8, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work from May 24, 2020 through July 11, 2020 (weeks 22-20 through 28-20) and was not eligible for benefits for those weeks (decision # 100436). Claimant filed a timely request for hearing. On July 21, 2022, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for August 15, 2022. On August 15, 2022, claimant failed to appear at the hearing, and ALJ Meerdink issued Order No. 22-UI-200551, dismissing claimant's request for hearing due to his failure to appear. On September 6, 2022, claimant filed a timely request to reopen the hearing. On May 3, 2023, ALJ Amesbury conducted a hearing, and on May 4, 2023 issued Order No. 23-UI-223901, denying claimant's request to reopen the hearing, leaving Order No. 22-UI-200551 undisturbed. On May 12, 2023, claimant filed an application for review of Order No. 23-UI-223901 with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB did not consider claimant's 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).

FINDINGS OF FACT: (1) On January 8, 2021, the Department mailed decision # 100436 to claimant's address on file with the Department. On January 28, 2021, claimant filed a timely request for hearing on decision # 100436.

(2) In April 2022, claimant moved from his address on file with OAH. He filed a change of address notice with the Postal Service but did not inform OAH or the Department of the change. Audio Record at 22:43 to 23:05. On July 21, 2022, OAH mailed notice of a hearing on decision # 100436 scheduled for August 15, 2022 to claimant's address on file with OAH.

(3) On August 15, 2022, claimant failed to appear for the hearing because he had not received the notice and did not know a hearing had been scheduled for that date. Later on August 15, 2022, after the

scheduled time of the hearing, claimant received notice of the hearing.¹ Audio Record at 23:06 to 23:48. On August 29, 2022, the Postal Service returned as undeliverable the Notice of Hearing that had been mailed to claimant on July 21, 2022. Exhibit 2 at 1.

(4) On September 6, 2022, claimant filed a timely request to reopen the August 15, 2022 hearing.

CONCLUSIONS AND REASONS: Claimant's request to reopen is allowed. Order No. 23-UI-223901 is reversed, Order No. 22-UI-200551 is cancelled, and a hearing on the merits of decision # 100436 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). Good cause does not include failure to receive a document due to not notifying the Employment Department or Office of Administrative Hearings of an updated address while the person is claiming benefits or if the person knows, or reasonably should know, of a pending appeal. OAR 471-040-0040(2)(b)(A).

The order under review concluded that claimant did not establish good cause to reopen the August 15, 2022 hearing because his failure to appear was caused by a delay in receiving the notice of hearing which, in turn, was caused by claimant moving to a new address in April 2022 and failing to update his address with OAH when he knew or reasonably should have known he had a pending appeal. Order No. 23-UI-223901 at 4. The record does not support this conclusion.

Claimant requested a hearing on January 28, 2021. The record does not show that claimant thereafter received any information about the status of his appeal prior to his April 2022 move to a new address. It can be inferred from this prolonged period of inactivity on claimant's request for hearing that claimant did not recall the existence of his pending appeal at the time of his move more than a year after filing it. Accordingly, the record does not show that between April 2022 and August 15, 2022, claimant knew or reasonably should have known that he had an appeal pending, obligating him to update his address with OAH. Therefore, the delay in claimant's receipt of the Notice of Hearing caused by claimant's move did not fall within the provisions of OAR 471-040-0040(2)(b)(A). Instead, given OAH's delay in scheduling the hearing after claimant filed his request for hearing, which was a factor beyond claimant's reasonable control, claimant's failure update his address with OAH constituted an excusable mistake that prevented him from attending the hearing. Claimant therefore has established good cause for failing to appear at the hearing.

For these reasons, claimant's request to reopen the August 15, 2022 hearing is allowed, and a hearing on the merits of decision # 100436 is required.

¹ It is not clear from the record how claimant could have received notice of the hearing on August 15, 2022, since the Notice of Hearing mailed to claimant on July 21, 2022 was later returned to OAH as undeliverable. However, the record as a whole shows that claimant did not have knowledge of the August 15, 2022 hearing prior to the hearing being convened on that date.

DECISION: Order No. 23-UI-223901 is set aside, Order No. 22-UI-200551 is cancelled, and a hearing on the merits of decision # 100436 is required.

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

DATE of Service: June 16, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-223901 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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