

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0560-R

*EAB Decision 2023-EAB-0560 Reversed on Reconsideration
Application for Review Timely Filed
Reversed & Remanded*

PROCEDURAL HISTORY AND FINDINGS OF FACT: On February 1, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant, but not for misconduct, and claimant was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # 105713). The employer filed a timely request for hearing. On March 27, 2023, ALJ Scott conducted a hearing, at which the claimant did not appear, and issued Order No. 23-UI-220175, reversing decision # 105713 by concluding that the employer discharged claimant for misconduct, disqualifying claimant from receiving unemployment insurance benefits effective November 27, 2022. On April 17, 2023, claimant filed an application for review of Order No. 23-UI-220175 with the Employment Appeals Board (EAB), which was also treated as a request to reopen per OAR 471-041-0060(4) and (5) because claimant failed to appear at the March 27, 2023 hearing and included a written statement with the April 17, 2023 application for review setting forth the reasons for missing the hearing.¹ On May 15, 2023, claimant filed a second application for review of Order No. 23-UI-220175 with EAB. On May 26, 2023, EAB issued EAB Decision 2023-EAB-0560, dismissing claimant's May 15, 2023 application for review as late without good cause. This matter comes before EAB for reconsideration of EAB Decision 2023-EAB-0560 on EAB's own motion.

This decision is issued pursuant to EAB's authority under ORS 657.290(3).

CONCLUSIONS AND REASONS: On reconsideration, EAB Decision 2023-EAB-0560 is reversed. Claimant's application for review was timely. Order No. 23-UI-220175 is reversed and the matter remanded to be consolidated with proceedings on claimant's request to reopen the March 27, 2023 hearing.

¹ Because claimant's request was initially processed only as a request to reopen the hearing, EAB was unaware of claimant's April 17, 2023 application for review at the time EAB Decision 2023-EAB-0560 was issued.

Reconsideration. ORS 657.290(3) authorizes the Employment Appeals Board on its own motion to reconsider, in its discretion, any previous decision of the Employment Appeals Board. EAB Decision 2023-EAB-0560, issued May 26, 2023, dismissed claimant’s May 15, 2023 application for review as late without good cause. However, EAB has now considered claimant’s April 17, 2023 application for review, which was timely filed. Accordingly, it is necessary and appropriate to reconsider EAB Decision 2023-EAB-0560. On reconsideration, EAB Decision 2023-EAB-0560 is reversed. For the reasons discussed below, claimant’s application for review was timely, Order No. 23-UI-220175 is reversed, and the matter remanded for further proceedings.

Application for Review. An application for review is timely if it is filed within 20 days of the date that OAH mailed the order for which review is sought. ORS 657.270(6); OAR 471-041-0070(1) (May 13, 2019). The 20-day filing period may be extended a “reasonable time” upon a showing of “good cause.” ORS 657.875; OAR 471-041-0070(2). “Good cause” means that factors or circumstances beyond the applicant’s reasonable control prevented timely filing. OAR 471-041-0070(2)(a). A “reasonable time” is seven days after the circumstances that prevented the timely filing ceased to exist. OAR 471-041-0070(2)(b). A late application for review will be dismissed unless it includes a written statement describing the circumstances that prevented a timely filing. OAR 471-041-0070(3).

The application for review of Order No. 23-UI-220175 was due by April 17, 2023. Claimant filed his first application for review on April 17, 2023. Accordingly, claimant’s application for review was timely, and is allowed.

Request to Reopen. 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).

A request to reopen the March 27, 2023 hearing is timely if it was filed on or before April 17, 2023. Claimant filed a request to reopen the March 27, 2023 hearing on April 17, 2023. Accordingly, his request to reopen was timely. Order No. 23-UI-220175 is therefore set aside and the matter remanded to determine whether claimant had good cause to reopen the March 27, 2023 hearing and, if so, to reopen the hearing on the merits of decision # 105713.²

DECISION: On reconsideration, EAB Decision 2023-EAB-0560 is reversed. Claimant’s application for review of Order No. 23-UI-220175 was timely. Order No. 23-UI-220175 is reversed, and this matter remanded for further proceedings consistent with this order.

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

² It appears that OAH has begun the process of considering claimant’s April 17, 2023 request to reopen the March 27, 2023 hearing. Accordingly, upon its receipt, this case should be consolidated on remand with the case OAH has opened on claimant’s April 17, 2023 request to reopen.

DATE of Service: July 20, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-220175 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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