

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0620

Reversed
Request to Reopen Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On December 11, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and was therefore disqualified from receiving unemployment insurance benefits effective October 4, 2020 (decision # 92712). Claimant filed a timely request for hearing. On April 4, 2022, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for April 12, 2022. On April 12, 2022, ALJ McGorin convened a hearing at which claimant failed to appear, and issued Order No. 22-UI-191093, dismissing claimant's request for hearing due to his failure to appear. On April 13, 2022, claimant filed a timely request to reopen the April 12, 2022 hearing.

On April 28, 2022, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for May 9, 2022. On May 9, 2023, ALJ Lewis conducted a hearing at which the employer failed to appear, and on May 10, 2023 issued Order No. 23-UI-224447, denying claimant's request to reopen the April 12, 2022 hearing and leaving Order No. 22-UI-191093 undisturbed. On May 30, 2023, claimant filed an application for review of Order No. 23-UI-224447 with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On December 21, 2020, claimant filed a request for hearing on decision # 92712.

(2) Beginning in late March 2022, claimant traveled out of town for work for "a couple weeks." Audio Record at 9:15 to 9:33. Claimant had a friend collect his mail while he was out of town. Claimant did not expect to receive correspondence related to his request for hearing during this time, about fifteen months after he first requested a hearing.

(3) On April 4, 2022, while claimant was out of town, OAH mailed notice to claimant's address of record that a hearing would be held on April 12, 2022.

(4) On either April 12 or 13, 2022, claimant returned home and discovered the hearing notice after the scheduled hearing time had passed.

(5) On April 13, 2022, claimant filed a request to reopen the April 12, 2022 hearing.

CONCLUSIONS AND REASONS: Claimant's request to reopen is allowed. Order No. 23-UI-224447 is reversed, Order No. 22-UI-191093 is cancelled, and a hearing on the merits of decision # 92712 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).

Claimant filed his request to reopen the April 12, 2022 hearing on April 13, 2022. Therefore, the request to reopen was timely. However, the order under review concluded that claimant did not establish good cause to reopen the April 12, 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-224447 at 3-4. The record does not support the conclusion that claimant lacked good cause for failing to appear at the April 12, 2022 hearing.

After filing his request for hearing in December 2020, there is no indication that OAH informed claimant about any action taken on his appeal for more than 15 months. Claimant therefore did not contemplate that, well over a year after making his hearing request, a hearing notice might be delivered and a hearing convened during the very brief time he was away from home. To the extent claimant failed to anticipate such correspondence and make more extensive arrangements for his mail to be monitored while he was away, such a failure amounted to an excusable mistake. Similarly, having claimant's mail forwarded to him by the U.S. Postal Service while he was out of town was unlikely to have resulted in claimant successfully receiving the notice and appearing at the hearing, given that there is typically a lag time involved when mail is forwarded and claimant was out of town for only a few weeks.

In *Bursell v. Employment Division*, 694 P.2d 558, 71 Or. App. 729 (1985), a claimant (Bursell) was temporarily away from home seeking work when notice of a hearing scheduled seven days later was mailed to him. Bursell returned home and saw the notice on the day of the hearing, but only after the hearing time had passed. Claimant similarly returned home within a day of the scheduled hearing but after the hearing time had passed. In allowing Bursell's request to reopen the hearing, the Oregon Court of Appeals 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 similarity of these facts to claimant’s situation supports the conclusion that claimant’s failure to attend the April 12, 2022 hearing was excusable 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-224447 is reversed, Order No. 22-UI-191093 is cancelled and claimant is entitled to a hearing on the merits of the decision # 92712.

DECISION: Order No. 23-UI-224447 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: July 6, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-224447 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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