

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0727

Reversed & Remanded

PROCEDURAL HISTORY AND FINDINGS OF FACT: On November 29, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause and was disqualified from receiving benefits effective November 6, 2022 (decision # 134718). Also on November 29, 2022, the Department served notice of an administrative decision concluding that claimant was not available for work from November 6 through 19, 2022 (weeks 45-22 through 46-22) and was not eligible for benefits for those weeks and until the reason for the denial ended (decision # 142006). Claimant filed timely requests for hearing on decisions # 134718 and 142006. On December 14, 2022, the Office of Administrative Hearings (OAH) served notices of hearings scheduled for December 28, 2022. On December 28, 2022, claimant failed to appear at the hearings, and on December 29, 2022, ALJ Griffin issued Orders No. 22-UI-211190 and 22-UI-211191, dismissing claimant's requests for hearing on decisions # 134718 and 142006 due to claimant's failure to appear, leaving both decisions undisturbed.

On January 3, 2023, claimant filed timely requests to reopen the hearings. ALJ Kangas considered claimant's requests, and on June 22, 2023 issued Orders No. 23-UI-228394 and 23-UI-228396, dismissing claimant's requests to reopen the hearings, subject to claimant's right to renew the reopen requests by providing additional information by July 6, 2023. On June 28, 2023, claimant filed timely applications for review of Orders No. 23-UI-228394 and 23-UI-228396 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-228394 and 23-UI-228396. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2023-EAB-0726 and 2023-EAB-0727).

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of claimant's statement attached to the applications for review regarding why they failed to appear at the hearings. This evidence has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 must submit such objection to this office in writing, setting forth

the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the exhibit will remain in the record.

CONCLUSIONS AND REASONS: Orders No. 23-UI-228394 and 23-UI-228396 are set aside and these matters remanded for further development of the record.

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 orders under review dismissed claimant’s requests to reopen the hearings because claimant did not provide information on the reopen requests to explain why they failed to appear at the hearings. Order No. 23-UI-228394 at 2–3, Order No. 23-UI-228396 at 2–3. Both orders permitted claimant additional time to provide information regarding why they failed to appear at the hearings. Claimant provided this information prior to the deadline indicated on the respective orders under review.

In their written statement attached to the applications for review, claimant explained, “I was there at my hearing but didn’t comprehend what I had to do. I called the wrong number[.]” EAB Exhibit 1 at 1. Claimant further explained that they made the call into the hearing line in the presence of, or with the assistance of, their “step worker.” EAB Exhibit 1 at 1. Claimant’s statement suggests that they may have failed to appear at the hearings due to an excusable mistake, as they might have been unable to call into the correct line due to either reasonable reliance on another (claimant’s “step worker”) or as a result of an inability to follow directions despite substantial efforts to comply. On remand, the ALJ should inquire as to the specifics of what caused claimant to call into the wrong number for the hearings, whether claimant made multiple attempts to call in to the hearings, and if so, the results of those attempts. The ALJ should also inquire as to whether any other factors, such as a disability or impairment, contributed to claimant’s failure to appear at the hearings.

For the above reasons, Orders No. 23-UI-228394 and 23-UI-228396 are set aside, and these matters remanded for hearings on whether claimant had good cause for failing to appear at the December 28, 2022 hearings and, if so, the merits of decisions # 134718 and 142006.

DECISION: Orders No. 23-UI-228394 and 23-UI-228396 are set aside, and these matters remanded for further proceedings consistent with this order.

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

DATE of Service: August 4, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 23-UI-228394 and 23-UI-228396 or return these matters to EAB. Only timely applications for review of the subsequent orders will cause these matters 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
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