

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-1023**

*Reversed*  
*Request to Reopen Allowed*  
*Merits Hearing Required*

**PROCEDURAL HISTORY:** On February 17, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that voluntarily quit working for the employer without good cause and was disqualified from receiving benefits effective January 28, 2022 (decision # 90233). Claimant filed a timely request for hearing. On April 22, 2022, ALJ Kaneshiro conducted a hearing at which the employer failed to appear. On June 1, 2022, notice was mailed to the parties that a continuation of the April 22, 2022 hearing would be held on June 15, 2022.<sup>1</sup> On June 15, 2022, claimant and the employer failed to appear at the hearing, and on June 16, 2022 ALJ Kaneshiro issued Order No. 22-UI-196327, reversing decision # 90233 by concluding that claimant quit with good cause and was not disqualified from receiving benefits based on the work separation.

On July 2, 2022, the employer filed a timely request to reopen the June 15, 2022 hearing. On August 31, 2023, ALJ Kaneshiro conducted a hearing, and on September 1, 2023 issued Order No. 23-UI-234890, denying the employer's request to reopen the hearing and leaving Order No. 22-UI-196327 undisturbed. On September 8, 2023, the employer filed an application for review of Order No. 23-UI-234890 with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** EAB did not consider the employer's written argument when reaching this decision because they did not include a statement declaring that they provided a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The employer's argument also contained information that was not part of the hearing record that is not relevant to EAB's determination of whether the employer's request to reopen the June 15, 2022 hearing should be allowed. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision.

<sup>1</sup> This continued hearing was scheduled because notice of the April 22, 2022 hearing had not been mailed to the employer's address of record. Because the April 22, 2022 hearing was continued to June 15, 2022, the employer did not need to show good cause for failing to appear at the April 22, 2022 hearing.

The parties may offer new information concerning the work separation into evidence at the remand hearing. At that time, it will be determined if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing regarding documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties in advance of the hearing at their addresses as shown on the certificate of mailing for the notice of hearing.

**FINDINGS OF FACT:** (1) On June 1, 2022, notice of a continued hearing scheduled for June 15, 2022 at 3:30 p.m. was mailed to the employer at the employer's address of record on file with the Department. The employer received the notice shortly after it was mailed.

(2) On June 15, 2022, the employer's owner planned to appear at the hearing. That morning, the owner learned that her son "crashed" his dirt bike while at his father's house. Audio Record at 10:33. The owner's son "was fine," but the owner felt she needed to "tend to him." Audio Record at 10:36. This incident caused the owner to forget about the hearing until that night after the hearing had taken place. The employer did not appear at the hearing for that reason.

(3) On July 2, 2022, the employer filed a request to reopen which contained a written statement explaining that the employer's owner failed to appear at the June 15, 2022 hearing due to a family emergency.

**CONCLUSIONS AND REASONS:** The employer's request to reopen the June 15, 2022 hearing is allowed.

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 order under review concluded that the owner's failure to appear at the June 15, 2022 hearing due to forgetting about the hearing did not arise from an excusable mistake, and the employer therefore did not have good cause to reopen the hearing. Order No. 23-UI-234890 at 3. The record does not support this conclusion.

The employer filed a request to reopen the June 15, 2022 hearing on July 2, 2022, which was within 20 days of the date of the hearing decision, and the request contained a written statement setting forth the employer's reason for missing the hearing: a family emergency which occurred that morning and which involved the owner's teenage son. The owner failed to appear at the June 15, 2022 hearing because she was distracted by unexpected events that day that caused her to forget about the hearing. It can reasonably be inferred that upon learning that her son had crashed his dirt bike and was potentially injured, the owner could think of little else but rushing to her son's location and monitoring his health

condition. Under these exigent circumstances, failing to remember the phone hearing scheduled for that afternoon constituted an excusable mistake that gave rise to the employer's failure to appear.

Accordingly, the employer has shown good cause to reopen the June 15, 2022 hearing. The employer's request to reopen the June 15, 2022 hearing is allowed, and the matter is remanded for a hearing on the merits of decision # 90233.

**DECISION:** Order No. 23-UI-234890 is reversed, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service: October 17, 2023**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-234890 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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