

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0148

Reversed
Request to Reopen Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On December 8, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for committing a disqualifying act under the Department’s drug, cannabis, and alcohol adjudication policy, disqualifying claimant from receiving unemployment insurance benefits effective August 13, 2023 (decision # 120404). Claimant filed a timely request for hearing. On January 9, 2024, the Office of Administrative Hearings (OAH) served a notice of hearing scheduled for January 29, 2024, at 9:30 a.m. On January 29, 2024, claimant failed to appear for the hearing, and ALJ Lucas issued Order No. 24-UI-246754, dismissing the hearing request due to claimant’s failure to appear and leaving decision # 120404 undisturbed. On January 29, 2024, claimant filed a timely request to reopen the hearing. ALJ Kangas considered claimant’s request, and on February 6, 2024, issued Order No. 24-UI-247328, denying claimant’s request to reopen the hearing and leaving Order No. 24-UI-246754 undisturbed. On February 9, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant submitted two written arguments, one on February 12, 2024, and one on February 23, 2024. Both arguments contained information not already included in the record. EAB considered the new information in claimant’s February 23, 2024, argument, because, as indicated below, it is being received into evidence as necessary to complete the record. However, claimant did not show that factors or circumstances beyond their reasonable control prevented them from offering the new information included in the February 12, 2024, written argument into the record. Therefore, under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into the record, with the exception of the new information contained in the February 23, 2024, written argument. EAB considered claimant’s February 12, 2024, written argument to the extent it was based on the record.

EVIDENTIARY MATTER: Claimant’s February 23, 2024, written argument contains relevant and material information that is necessary to resolve issues in this case. Therefore, the information is

necessary to complete the record. As such, EAB is receiving the information contained in claimant's February 23, 2024, argument into evidence as necessary to complete the record pursuant to OAR 471-041-0090(1)(a). The additional evidence contained in the February 23, 2024, argument is being 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.

FINDINGS OF FACT: (1) In or around March 2023, claimant entered into an opioid addiction recovery program that included taking prescribed doses of methadone. Thereafter, claimant received a prescribed dose of methadone each weekday. Although the methadone claimant received was essential to their recovery, it tended to make claimant "drowsy and a bit confused." EAB Exhibit 1 at 4. Claimant also experienced symptoms of post-acute withdrawal syndrome, such as mood swings, sleep problems, and memory issues. EAB Exhibit 1 at 3.

(2) On January 9, 2024, OAH mailed notice of a hearing on decision # 120404, scheduled for January 29, 2024, at 9:30 a.m. to claimant's address on file with OAH. Claimant received the notice shortly after it was mailed.

(3) When claimant read the hearing notice scheduling the hearing on decision # 120404 for January 29, 2024, at 9:30 a.m., claimant was confused due to the effects of their prescribed dose of methadone and post-acute withdrawal syndrome, and mistakenly believed that the 9:30 a.m. hearing was set for 1:00 p.m.

(4) On January 29, 2024, claimant failed to appear for the hearing because they mistakenly believed the hearing was set for 1:00 p.m. Claimant filed a timely request to reopen the January 29, 2024, hearing the same day.

CONCLUSIONS AND REASONS: Claimant's request to reopen the hearing is allowed. Order No. 24-UI-247328 is reversed, Order No. 24-UI-246754 is cancelled, and a hearing on the merits of decision # 120404 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).

The order under review concluded that claimant did not establish good cause to reopen the January 29, 2024, hearing because they failed to show that an excusable mistake or factors beyond their reasonable control prevented them from appearing at the hearing. Order No. 24-UI-247328 at 2-3. The record does not support this conclusion.

Claimant was in an addiction recovery program that included taking prescribed doses of methadone, which made claimant drowsy and confused. Claimant also suffered from symptoms of post-acute withdrawal syndrome, which caused claimant memory problems. When claimant read the hearing notice, claimant was confused because of the methadone and post-acute withdrawal syndrome and mistakenly believed that the 9:30 a.m. hearing was set for 1:00 p.m. Given that claimant's mistake regarding the scheduled time for the hearing was the product of their taking methadone as directed, as well as symptoms of post-acute withdrawal syndrome, claimant's mistake was excusable. Claimant therefore failed to appear for the January 29, 2024, hearing because, as a result of their excusable mistake, they were not aware the hearing was scheduled to take place at that time. Thus, claimant's failure to appear arose from an excusable mistake and claimant established good cause to reopen the hearing. Accordingly, claimant's request to reopen is allowed, and claimant is entitled to a hearing on the merits of decision # 120404.

DECISION: Order No. 24-UI-247328 is set aside, Order No. 24-UI-246754 is cancelled, and a hearing on the merits of decision # 120404 is required.

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

DATE of Service: March 13, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-247328 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 الاستئناف 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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