

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0192

Reversed
Merits Hearing Required

PROCEDURAL HISTORY: On November 30, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving unemployment insurance benefits effective September 3, 2023 (decision # 112026). Claimant filed a timely request for hearing. On February 8, 2024, ALJ Blam issued Order No. 24-UI-247650, dismissing claimant's request for hearing as having been previously withdrawn. On February 21, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is claimant's application for review, which is necessary to complete the record. It 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.

WRITTEN ARGUMENT: EAB did not consider claimant's written argument when reaching this decision, aside from the explanation written on the application for review of why claimant was requesting relief from EAB, because claimant 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 argument was also not relevant to EAB's current consideration of this matter, as the argument addressed only the merits of the work separation at issue in decision # 112026, rather than whether claimant's request for hearing was properly dismissed on procedural grounds. The parties may offer new information about 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 December 6, 2023, claimant filed a timely request for hearing on decision # 112026.

(2) On January 26, 2024, the Office of Administrative Hearings (OAH) mailed notice to the parties that a hearing was scheduled for February 8, 2024, at 9:30 a.m. A Cantonese interpreter was scheduled to appear at the hearing at claimant's request.

(3) On February 7, 2024, claimant telephoned OAH. The OAH representative understood claimant to have withdrawn their request for hearing during the call. OAH emailed the interpreter that afternoon to cancel their services at the hearing. Order No. 24-UI-247650, dismissing claimant's request for hearing, was issued the following day based on the OAH representative's note of that call.

(4) Claimant intended to request a postponement of the hearing during the February 7, 2024, call due to a conflicting personal matter the day of the hearing. Claimant did not understand that their request for hearing would be dismissed as a result of that call.

CONCLUSIONS AND REASONS: Claimant's request for hearing was not knowingly and voluntarily withdrawn. Claimant is entitled to a hearing on the merits of decision # 112026.

Under ORS 657.270(7)(a) and OAR 471-040-0035(1) (August 1, 2004), an administrative law judge may order that a request for hearing be dismissed if the request has been withdrawn by the party who filed the request. The order under review dismissed claimant's request for hearing, apparently based on the note of an OAH representative that claimant called them on February 7, 2024, and requested the withdrawal.

However, in the statement accompanying their application for review, claimant wrote, "I apologize for missing the phone hearing. I had a school admission advisor meeting scheduled the same day to prepare for and I got tied up with that. I should have followed up to reschedule the hearing." EAB Exhibit 1 at 1. It can reasonably be inferred from claimant's apparent understanding that the hearing would still be held or could be rescheduled that claimant called OAH on February 7, 2024, to request postponement of the hearing rather than to withdraw their request for hearing. It is unclear, given claimant's request for a Cantonese interpreter at the hearing, if an interpreter was used during the February 7, 2024, call and, if not, whether a language barrier may have resulted in misunderstanding during the call. Further, claimant's unwavering disagreement with the conclusions of decision # 112026 is evident from their request for hearing and subsequent filings with OAH and EAB. This suggests that even if claimant consented to withdrawing their request for hearing during the call, such consent was given only to accommodate their scheduling conflict and without their full knowledge of the consequences of withdrawal, or of the ability to request postponement as an alternative.

For these reasons, it is more likely than not that claimant did not knowingly and voluntarily withdraw their request for hearing. Claimant is therefore entitled to a hearing on the merits of decision # 112026.

DECISION: Order No. 24-UI-247650 is reversed. A hearing on the merits of decision # 112026 is required.

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

DATE of Service: March 29, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-247650 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 دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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