

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0209

Reversed
Request to Reopen Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On December 4, 2023, 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 August 6, 2023 (decision # 84005). Claimant filed a timely request for hearing. On January 10, 2024, notice was mailed to the parties that a hearing was scheduled for January 30, 2024, at 8:15 a.m. On January 30, 2024, ALJ Buckley convened a hearing at which claimant failed to appear, and issued Order No. 24-UI-246851, dismissing claimant's request for hearing due to their failure to appear. On February 6, 2024, claimant filed an application for review of Order No. 24-UI-246851 with the Employment Appeals Board (EAB) that was treated as a request to reopen the January 30, 2024, hearing, in accordance with the Department's rules. ALJ Kangas considered the request, and on February 15, 2024, issued Order No. 24-UI-248185, denying the request to reopen and leaving Order No. 24-UI-246851 undisturbed. On February 26, 2024, claimant filed an application for review of Order No. 24-UI-248185 with EAB.

FINDINGS OF FACT: (1) On December 15, 2023, claimant filed a request for hearing on decision # 84005. In that request, claimant stated that they were unable to read notices from the Department due to a vision impairment and requested that notice of the hearing be communicated to them by telephone. Exhibit 2 at 1.

(2) On January 10, 2024, notice was mailed to claimant that the hearing on decision # 84005 was scheduled for January 30, 2024, at 8:15 a.m. The Office of Administrative Hearings (OAH) did not communicate this information to claimant by telephone. Claimant did not appear at the hearing because they could not read the notice and did not know that the hearing had been scheduled.

CONCLUSIONS AND REASONS: Claimant's request to reopen is allowed and a hearing on the merits of decision # 84005 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).

OAR 471-040-0040(6) provides that OAH will treat as a request to reopen the hearing any application for review that a party files with the Employment Appeals Board or the Employment Department, where the filing party failed to appear at the hearing that led to the decision on appeal, unless the applicant specifically states in the application that the applicant does not wish to have the case reopened.

On February 6, 2024, claimant filed a timely application for review of Order No. 24-UI-246851, which had dismissed claimant’s request for hearing due to claimant’s failure to appear at the January 30, 2024, hearing. Claimant did not state in their application for review of Order No. 24-UI-246851 that they did not wish the hearing to be reopened, and therefore the application was properly treated as a request to reopen the hearing pursuant to OAR 471-040-0040(6). Exhibit 5 at 2. The request to reopen did not contain a written statement setting forth the reasons that claimant had missed the hearing. *See* Exhibit 5 at 2.

Claimant notified OAH in their request for hearing that they were unable to read written notices due to a visual impairment and requested to be given notice by telephone. The order under review concluded that good cause was not shown to reopen the January 30, 2024, hearing because a written statement explaining claimant’s reasons for missing the hearing was not filed with the request, and “[c]arefully reading [Order No. 24-UI-246851] and following its instructions were within [claimant’s] reasonable control.” Order No. 24-UI-248185 at 2-3. The record does not support these conclusions.

The record does not show that claimant was notified by means other than mail of Order No. 24-UI-246851 and claimant’s appeal rights from that order, including the requirement that a written statement accompany a request to reopen. It is reasonable to infer that claimant was unaware of the written statement requirement due to their inability to read the order and OAH’s failure to provide notice by telephone as claimant requested due to their impairment. These were circumstances beyond claimant’s reasonable control. It is therefore appropriate to analyze the record for good cause to reopen the hearing, even in the absence of a written statement setting forth the reasons claimant failed to appear.

The record does not show that claimant was informed of the hearing’s date and time by means other than mailed notice. For the same reasons previously discussed, it is reasonable to infer that claimant did not appear at the hearing because claimant was unable to read the notice and therefore was unaware the hearing had been scheduled. Claimant’s inability to read the notice of hearing and OAH’s failure to provide notice by telephone as claimant requested due to their impairment were factors beyond claimant’s reasonable control that prevented claimant’s attendance at the hearing. Accordingly, good cause exists to reopen the hearing.

For these reasons, claimant's request to reopen the January 30, 2024, hearing is allowed and the matter is remanded for a hearing on the merits of decision # 84005. **OAH should inform claimant by telephone of the time and date of the merits hearing, as well as how to participate, and other pertinent information contained in the written notice of hearing.**

DECISION: Order No. 24-UI-248185 is set aside, and the matter remanded for a hearing on the merits of decision # 84005.

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

DATE of Service: April 3, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-248185 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 desisyong ito.

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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