

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0234

Reversed & Remanded

PROCEDURAL HISTORY AND FINDINGS OF FACT: On November 30, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and therefore was disqualified from receiving unemployment insurance benefits effective June 21, 2020 (decision # 73911). Claimant filed a timely request for hearing. On January 6, 2022, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for January 21, 2022. On January 21, 2022, claimant failed to appear at the hearing, and on January 24, 2022, ALJ McGorin issued Order No. 22-UI-184614, dismissing claimant's request for hearing due to their failure to appear. On February 14, 2022, Order No. 22-UI-184614 became final without claimant having filed a request to reopen the hearing. On July 31, 2023, claimant filed a late request to reopen the hearing. ALJ Scott considered claimant's request, and on February 12, 2024, issued Order No. 24-UI-247877, denying the reopen request as late without good cause and leaving Order No. 22-UI-184614 undisturbed. On March 4, 2024, claimant filed an application for review of Order No. 24-UI-247877 with EAB.

WRITTEN ARGUMENT: Claimant did not declare 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 also contained information that was not part of the record and did not show that factors or circumstances beyond claimant's reasonable control prevented them from offering the information with their request to reopen the hearing as required by OAR 471-040-0040(3) (February 10, 2012). Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into the record when reaching this decision.

The parties may offer new information, such as the new information contained in or attached to claimant's written argument, 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.

CONCLUSIONS AND REASONS: Order No. 24-UI-247877 is reversed, and this matter 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. The period within which a party may request reopening may be extended if the party requesting reopening has good cause for failing to request reopening within the time allowed, and acts within a reasonable time. OAR 471-040-0041(1) (February 10, 2012). “Good cause” exists when an action, delay, or failure to act arises from an excusable mistake or from factors beyond an applicant’s reasonable control. OAR 471-040-0041(2). “A reasonable time,” is seven days after the circumstances that prevented a timely filing ceased to exist. OAR 471-040-0041(3). The party requesting reopening shall set forth the reason(s) for filing a late request to reopen in a written statement, which OAH shall consider in determining whether good cause exists for the late filing, and whether the party acted within a reasonable time. OAR 471-040-0041(4). Under OAR 471-040-0041(2)(b)(A), “good cause” does not include the failure to receive a document due to not notifying the Department or OAH of an updated address while the person is claiming benefits or if the person knows, or reasonably should know, of a pending appeal.

The order under review denied claimant’s late request to reopen the hearing, concluding that claimant’s request to reopen “did not address the lateness of [their] request to reopen in that document.” Order No. 24-UI-247877 at 3. The record does not support this conclusion. On their reopen request (dated April 28, 2023 but postmarked July 31, 2023), claimant stated, “Although I have sent multiple address changes and notified your agent via phone call, you still deliver mail to the wrong address. The impact of this is I did not get this notice of a hearing until AFTER the hearing since it had to be forwarded through [a] different post office.” Exhibit 5 at 1. Additionally, the record shows that the January 6, 2022 notice of hearing was mailed to claimant at a different address in Vancouver, Washington than claimant listed on their reopen request. *See* Exhibit 3 at 5. These suggest that the reason claimant filed their reopen request late was because Order No. 22-UI-184614 was not mailed to claimant’s current address and are sufficient to satisfy the requirement of OAR 471-040-0041(4) that the requesting party include in their request the reason for filing the late request in a written statement.

If claimant did not receive the January 6, 2022 notice of hearing, they may have failed to appear at the hearing due to factors beyond their reasonable control. Similarly, if claimant did not receive Order No. 22-UI-184614 at their current address claimant may have failed to file a timely request to reopen the hearing due to factors beyond their reasonable control. However, further information is necessary to determine whether claimant had good cause to file the late request to reopen; whether they filed the late request within a reasonable time after the factors which prevented a timely filing ceased; and whether they had good cause for failing to appear at the hearing. On remand, the ALJ should inquire as to when claimant received the notice of hearing or Order No. 22-UI-184614 (dismissing claimant’s initial hearing request), for what periods of time they were residing or receiving mail at any of the addresses

the relevant documents were mailed to them, when and by what means claimant notified the Department or OAH of their changes in address, and if claimant was claiming benefits or was aware of a pending appeal at the time these documents were mailed. Additionally, the ALJ should inquire as to what prompted claimant to file the late reopen request when they did, as opposed to some earlier date, particularly as claimant's request to reopen is dated several months prior to when it was postmarked. The ALJ should also inquire as to whether any other factors contributed to claimant's failure to appear at the hearing or file a timely request to reopen the hearing.

For the above reasons, Order No. 24-UI-247877 is set aside, and this matter remanded for a hearing on whether claimant's late request to reopen the hearing should be allowed and, if so, the merits of decision # 73911.

DECISION: Order No. 24-UI-247877 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: April 12, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-247877 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



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 الإستئناف 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.

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

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.