

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0243

Reversed
Late Request to Reopen Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On July 21, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving benefits effective January 3, 2021 (decision # 134236). Claimant filed a timely request for hearing. On December 8, 2022, notice was mailed to the parties that a hearing was scheduled for December 21, 2022. On December 21, 2022, ALJ Sachet-Rung convened a hearing at which claimant failed to appear, and issued Order No. 22-UI-210654 dismissing claimant's request for hearing due to their failure to appear. On January 10, 2023, Order No. 22-UI-210654 became final without claimant having filed a request to reopen the hearing. On August 22, 2023, claimant filed a late request to reopen the December 21, 2022, hearing. ALJ Kangas considered the request, and on February 14, 2024, issued Order No. 24-UI-248062, denying the request and leaving Order No. 22-UI-210654 undisturbed. On March 5, 2024, claimant filed an application for review of Order No. 24-UI-248062 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 the statement included with claimant's March 5, 2024, mailed application for review, which is admitted as 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: Claimant filed two applications for review of Order No. 24-UI-248062 on March 5, 2024 (electronically and by mail) that contained arguments, and made an additional filing on March 21, 2024, that also contained an argument. EAB did not consider these written arguments when reaching this decision, except as admitted in EAB Exhibit 1, 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). EAB considered claimant's March 11, 2024, written argument in reaching this decision.

FINDINGS OF FACT: (1) On August 10, 2021, claimant filed a timely request for hearing on decision # 134236.

(2) On December 8, 2022, notice was mailed to the parties that a hearing was scheduled for December 21, 2022. Claimant did not receive this notice.

(3) On December 21, 2022, claimant failed to appear at the hearing because claimant had not received notice of it. That day, Order No. 22-UI-210654, dismissing claimant's request for hearing due to their failure to appear, was mailed to claimant's address of record on file with the Department and the Office of Administrative Hearings (OAH). Claimant did not receive Order No. 22-UI-210654.

(4) On August 3, 2023, the Department issued an administrative decision based in part on decision # 134236, concluding that claimant had been overpaid benefits.¹ Prior to receiving this decision, claimant believed that their appeal of decision # 134236 had been resolved in their favor, as claimant had not received notice of the hearing being scheduled or their request for hearing being dismissed.

(5) On August 22, 2023, claimant filed a late request to reopen the December 21, 2021, hearing.

CONCLUSIONS AND REASONS: Claimant's late request to reopen is allowed and a hearing on the merits of decision # 134236 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 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

¹ EAB has taken notice of this fact which is contained in Employment Department records. OAR 471-041-0090(1). Any party that objects to our taking notice of this information 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 noticed fact will remain in the record.

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).

The request to reopen the December 21, 2022, hearing was due January 10, 2023. Because claimant's request was filed August 22, 2023, the request was late. However, claimant has shown good cause for the late filing.

Claimant explained in their request that they "missed the hearing as I never received a follow up on what to do or where to call. . . I didn't hear back from the employment department." Exhibit 5 at 1. Claimant later clarified, "I check my mail regularly, but I did not receive the Hearing Decision 22-UI-210654 on December 21, 2022." EAB Exhibit 1 at 1. With this clarification, the record shows that claimant did not receive notice of the December 21, 2022, hearing or Order No. 22-UI-210654. It is unclear from the record precisely why claimant did not receive these documents, however the lengthy delay between claimant's August 10, 2021, request for hearing and the December 8, 2022 scheduling of that hearing was likely a factor. It can therefore be inferred that claimant's failure to receive these documents constituted a factor beyond claimant's reasonable control that prevented claimant's attendance at the December 21, 2022, hearing, and prevented timely filing of their request to reopen the hearing.

Claimant further stated in their August 22, 2023, request to reopen that they had believed their appeal of decision # 134236 was resolved favorably based on not having received any correspondence about the appeal for nearly two years, but "realize[d] now by recent mail it was not." Exhibit 5 at 1. Claimant's clarifying statement mentioned receiving the August 3, 2023, overpayment decision, which included notice that the deadline to appeal that decision was August 23, 2023. EAB Exhibit 1 at 1. Having failed to receive Order No. 22-UI-210654, claimant would not have been aware from the assessment of an overpayment alone that the December 21, 2022, hearing had been convened and the request for hearing dismissed, nor would claimant have reason to be aware that the deadline to request reopening of that hearing would be different from the deadline for appealing the overpayment decision. Therefore, the factors that prevented timely filing of the request to reopen did not cease until August 22, 2023, when claimant filed their request. Accordingly, good cause has been shown for the late request to reopen to be filed and it was filed within a reasonable time after the factors that prevented timely filing ceased.

Because claimant's failure to receive notice of the December 21, 2022, hearing was a factor beyond claimant's reasonable control that prevented claimant from attending the hearing, good cause also has been shown to reopen the hearing.

For these reasons, claimant's late request to reopen is allowed and a hearing on the merits of decision # 134236 is required.

DECISION: Order No. 24-UI-248062 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 16, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-248062 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

ខ្ញុំស្រឡាត់ – ចាំពិតណាស់នឹងមិនរក្សាទុកភារកិច្ចរបស់លោកអ្នកបានទេ។ បើលោកអ្នកមិនយល់អំពីសេចក្តីសម្រេចនេះទេ សូមទាក់ទងគណៈកម្មការឧទ្ធរណ៍ការងារភ្លាមៗ។ ប្រសិនបើលោកអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រេចនេះទេ លោកអ្នកអាចដាក់ពាក្យប្តឹងសុំឲ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

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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