

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0291

Reversed
Request to Reopen Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On May 25, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing an overpayment of \$21,336 combined in Federal Pandemic Unemployment Compensation (FPUC), Pandemic Unemployment Assistance (PUA), and Lost Wages Assistance (LWA) benefits that claimant was required to repay to the Department and a \$5,860.80 monetary penalty. Claimant filed a timely request for hearing. On August 3, 2023, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for August 17, 2023. On August 17, 2023, claimant failed to appear at the hearing, and on August 18, 2023, ALJ Mott issued Order No. 23-UI-233686, dismissing claimant's request for hearing due to their failure to appear, leaving the May 25, 2022 administrative decision undisturbed. On September 7, 2023, claimant filed a timely request to reopen the hearing. ALJ Scott considered claimant's request, and on March 1, 2024 issued Order No. 24-UI-249262, dismissing claimant's request to reopen and leaving Order No. 23-UI-233686 undisturbed. On March 21, 2024, claimant filed an application for review of Order No. 24-UI-249262 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 consists of the envelope in which the August 3, 2023 notice of hearing was returned to OAH as undeliverable, and 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 considered claimant's written argument when reaching this decision.

FINDINGS OF FACT: (1) On May 25, 2022, the Department served notice of the May 25, 2022 administrative decision to claimant's address of record in Coos Bay, Oregon. On May 31, 2022, claimant filed a timely request for hearing on the May 25, 2022 administrative decision.

(2) At some time prior to August 3, 2023, claimant moved from the Coos Bay address to an address in Deer Island, Oregon. Claimant set up a mail forwarding service with the United States Postal Service (USPS) at some point after they moved. USPS standard mail forwarding lasts for 12 months, and an addressee can pay to extend the forwarding time for an additional six, 12, or 18 months beyond the initial 12-month period.¹

(3) On August 3, 2023, OAH served notice of a hearing on the May 25, 2022 administrative decision scheduled for August 17, 2023. OAH mailed the notice of hearing to claimant at an address in Coos Bay, Oregon. On August 11, 2023, the notice of hearing mailed to claimant at that address was returned to OAH as undeliverable. EAB Exhibit 1. The return notice on the envelope stated, "FORWARD TIME EXP RTN TO SEND," and included claimant's Deer Island, Oregon address. EAB Exhibit 1.

(4) Claimant never received a notice of the hearing scheduled for August 17, 2023, and failed to appear at the hearing for that reason.

(5) On August 18, 2023, Order No. 23-UI-233686, dismissing claimant's request for hearing due to their failure to appear, was mailed to claimant at the Coos Bay address. On September 7, 2023, claimant filed a request to reopen the hearing. Claimant updated their address on the request. Exhibit 5 at 1.

CONCLUSIONS AND REASONS: Claimant's request to reopen is allowed, and a hearing on the merits of the May 25, 2022 administrative decision 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). Under OAR 471-040-0040(2)(b)(A), "good cause" does not include the "failure to receive a document due to not notifying the Employment Department or Office of Administrative Hearings of an updated address while the person is claiming benefits or if the person knows, or reasonably should know, of a pending appeal."

Claimant filed their request to reopen the hearing within 20 days of the date on which Order No. 23-UI-233686 was issued, and also included with the request a written explanation of why they failed to appear at the hearing. Claimant's request therefore complied with the requirements of OAR 471-040-0040(1)(b) and (3). Nevertheless, the order under review denied claimant's request to reopen the hearing, concluding that claimant did not have good cause to reopen the hearing under OAR 471-040-0040(2)(b)(A) because their failure to receive the notice of hearing was the result of failing to notify the

¹ EAB has taken notice of these facts, which are generally cognizable facts. OAR 471-041-0090(1). A copy of the information is available to the parties at <https://www.usps.com/manage/forward.htm>. 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 facts will remain in the record.

Department or OAH of claimant's updated address. Order No. 24-UI-249262 at 2–3. The record does not support this conclusion.

Despite the fact that claimant filed their request for hearing on May 31, 2022, OAH did not schedule a hearing on the May 25, 2022 administrative decision until August 3, 2023—well over a year after claimant's request for hearing. The record does not show when claimant moved from the Coos Bay address. However, as claimant filed their request for hearing less than a week after the May 25, 2022 administrative decision was mailed, it can be inferred that they still were receiving mail at the Coos Bay address as of that date. Furthermore, as the request for hearing was mailed to the Coos Bay address and returned as undeliverable, it can be inferred that claimant moved from Coos Bay some time prior to the issuance of the notice of hearing. USPS's standard mail forwarding service lasts for 12 months. As the envelope from the returned mail indicated that claimant's mail forwarding had expired, it can be reasonably inferred that claimant moved more than a year prior to the issuance of the notice of hearing.

It is likely true that claimant did not receive the notice of hearing because it was mailed to their previous address as a result of their failure to update their address with the Department or OAH. However, it also stands to reason that claimant likely would have received the notice of hearing if OAH had either scheduled the hearing promptly, instead of waiting more than a year to do so; or, having received the returned notice of hearing almost a week prior to the scheduled hearing, attempted to re-schedule and re-notice the hearing using the new address that USPS itself provided to OAH. Because OAH failed to do either of these things when it was reasonably within their power to do so, the proximate cause of claimant's failure to appear at the hearing was OAH's failure either to promptly schedule a hearing, or attempt to re-notice the hearing once they learned of claimant's new address. As such, claimant failed to appear at the hearing due to factors beyond their reasonable control, and had good cause for failing to appear at the hearing. Claimant's request to reopen the hearing on the May 25, 2022 administrative decision therefore is allowed, and claimant is entitled to a hearing on the merits of that decision.

DECISION: Order No. 24-UI-249262 is set aside, as outlined above.

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

DATE of Service: May 1, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-249262 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 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.

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