

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0312

Late Application for Review Allowed
Order Reversed ~ Request to Reopen Allowed ~ Merits Hearing Required

Solicitud Tardía de Revisión Permitida
Orden Revocada ~ Solicitud de Reabrir la Audiencia es Permitida
Se Requiere Audiencia Sobre los Méritos

Esta decisión concluye que se permite la solicitud tardía de revisión de la reclamante y la solicitud de reabrir la audiencia sobre la decisión # 143226, y que se requiere una audiencia en OAH sobre los méritos de la decisión # 143226. Partes de esta decisión están traducidas al español. Sin embargo, hay información importante en esta decisión que aparece solo en inglés con respecto a por qué la Junta de Apelaciones de Empleo (EAB, por sus siglas en inglés) determinó que se permitiría la solicitud tardía de revisión y la solicitud de reabrir de la audiencia de la reclamante, y por qué debe haber una audiencia sobre la decisión # 143226. Si necesita interpretación en español de la parte de esta decisión que aparece en inglés, puede obtenerla llamando a la EAB al 503-278-2077 y solicitando un intérprete de español.¹

PROCEDURAL HISTORY: On January 4, 2024, 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 August 20, 2023 (decision # 143226). Claimant filed a timely request for hearing. On January 29, 2024, notice was mailed to the parties that a hearing was scheduled for February 13, 2024 at 1:30 p.m. On February 13, 2024, ALJ Enyinnaya convened a hearing at which claimant and the employer

¹ This decision concludes that claimant's late application for review is allowed, claimant's request to reopen the hearing on decision # 143226 is allowed, and the matter is remanded for a hearing on decision # 143226. Portions of this decision are translated into Spanish. However, there is important information in this decision that appears only in English regarding why the Employment Appeals Board (EAB) determined that claimant's late application for review is allowed, claimant's request to reopen the hearing on decision # 143226 is allowed, and the matter is remanded for a hearing. If you require Spanish interpretation of the portion of this decision that appears in English, you can obtain that by calling EAB at 503-278-2077 and requesting a Spanish interpreter.

failed to appear, and on February 14, 2024, issued Order No. 24-UI-248086, dismissing claimant's request for hearing due to her failure to appear.

On February 20, 2024, the employer filed a request to reopen the February 13, 2024 1:30 p.m. hearing. ALJ Kangas considered the request, but with the misunderstanding that it had been filed by claimant rather than the employer. On March 4, 2024, ALJ Kangas issued Order No. 24-UI-249400, denying the employer's request to reopen as without good cause having been shown by claimant and leaving Order No. 24-UI-248086 undisturbed.

Also on March 4, 2024, claimant filed a timely request to reopen the February 13, 2024 hearing. The Office of Administrative Hearings (OAH) did not consider claimant's request to reopen. On March 25, 2024, Order No. 24-UI-249400 became final without any party having filed an application for review with the Employment Appeals Board (EAB). On March 26, 2024, claimant filed a late application for review of Order No. 24-UI-249400 with EAB.

HISTORIA PROCESAL: *El 4 de enero de 2024, el Departamento de Empleo de Oregon (el Departamento) envió notificación de una decisión administrativa concluyendo que la reclamante dejó el trabajo sin buena causa y fue descalificada de recibir beneficios de desempleo a partir del 20 de agosto de 2023 (decisión # 143226). La reclamante sometió una aplicación oportuna para una audiencia. El 29 de enero de 2024, se envió por correo a las partes un aviso de que se programó una audiencia para el 13 de febrero de 2024 a la 1:30 p.m. El 13 de febrero de 2024, Jueza Administrativa (ALJ) Enyinnaya convocó a una audiencia en la que la reclamante y el empleador no asistieron. El 14 de febrero de 2024, ALJ Enyinnaya emitió la Orden No. 24-UI-248086, desestimando la solicitud de audiencia de la reclamante debido a su falta de asistir a la audiencia.*

El 20 de febrero de 2024, el empleador presentó una solicitud para reabrir la audiencia del 13 de febrero de 2024 a la 1:30 p.m. ALJ Kangas consideró la solicitud, pero con el malentendido de que había sido presentada por la reclamante y no por el empleador. El 4 de marzo de 2024, ALJ Kangas emitió la Orden No. 24-UI-249400, denegando la solicitud de reabrir del empleador por no haber demostrado una buena causa por parte del reclamante y dejando intacta la Orden No. 24-UI-248086.

También el 4 de marzo de 2024, la reclamante presentó una solicitud oportuna para reabrir la audiencia del 13 de febrero de 2024. La Oficina de Audiencias Administrativas no consideró la solicitud de reabrir de la reclamante. El 25 de marzo de 2024, la Orden No. 24-UI-249400 se convirtió en final sin que ninguna de las partes haya presentado una solicitud de revisión ante la Junta de Apelaciones de Empleo (EAB). El 26 de marzo de 2024, la reclamante presentó una solicitud tardía de revisión de la Orden No. 24-UI-249400 con EAB.

EVIDENTIARY MATTERS: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is claimant's March 4, 2024 request to reopen, marked as EAB Exhibit 1, and claimant's March 26, 2024 application for review of Order No. 24-UI-24900, marked as EAB Exhibit 2, and a copy provided to the parties with this decision. Any party that objects to our admitting EAB Exhibits 1 and 2 must submit such objection to this office in writing, explaining the reason for 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 exhibits will remain in the record.

ASUNTOS SOBRE EVIDENCIA: *EAB ha considerado evidencia adicional al llegar a esta decisión bajo OAR 471-041-0090(1) (13 de mayo de 2019). La evidencia adicional es la solicitud de reabrir la audiencia de la reclamante del 4 de marzo de 2024, marcada como EAB Exhibit 1, y la solicitud de la reclamante del 26 de marzo de 2024 para la revisión de la Orden No. 24-UI-24900, marcada como EAB Exhibit 2, y una copia proporcionada a las partes con esta decisión. Cualquier parte que se oponga a que admitamos los EAB Exhibit 1 y 2 debe presentar su objeción a EAB por escrito, explicando por escrito las para la objeción, dentro de los diez días siguientes a la fecha en que enviemos por correo esta decisión. OAR 471-041-0090(2). A menos que se reciba y sostenga la objeción, las pruebas documentales permanecerán en el expediente.*

FINDINGS OF FACT: (1) On January 29, 2024, notice was mailed to claimant’s mailing address of record on file with OAH that a hearing on decision # 143226 was scheduled for February 13, 2024 at 1:30 p.m. The notice was provided in English and Spanish, and claimant received it shortly after it was mailed. Claimant also received notice, mailed January 29, 2024, that a consolidated hearing on two other matters involving claimant was scheduled at 1:00 p.m. on February 13, 2024. Claimant simultaneously received another notice, also mailed January 29, 2024, rescheduling the 1:00 p.m. consolidated hearing to 12:00 p.m.

(2) On February 13, 2024, claimant attended the 12:00 p.m. hearing, which was interpreted in Spanish at claimant’s request. The ALJ instructed claimant at the conclusion of that hearing that claimant would have to call in again to attend the hearing on decision # 143226 at 1:30 p.m. Claimant attempted to call into the hearing from 1:30 p.m. to 2:00 p.m. but was unsuccessful.

(3) On March 4, 2024, claimant filed a request to reopen the hearing on decision # 143226. Though the request was timely, OAH did not consider the request because OAH mistakenly believed that claimant had already filed such a request on February 20, 2024. However, the prior request to reopen was filed by the employer, and not claimant. Also on March 4, 2024, OAH issued Order No. 24-UI-249400, denying the employer’s February 20, 2024 request to reopen. Order No. 24-UI-249400 became final on March 25, 2024, without any party filing an application for review with EAB.

(4) On March 26, 2024, claimant filed a late application for review of Order No. 24-UI-249400 and attached the March 4, 2024 request to reopen to her application. The request included evidence that claimant attempted to file it on March 1, 2024, as well as a written statement containing similar information to that written in the request to reopen. EAB Exhibit 2 at 1-4.

CONCLUSIONS AND REASONS: Claimant’s late application for review of Order No. 24-UI-249400 is allowed. Claimant’s request to reopen the February 13, 2024 1:30 p.m. hearing is allowed, and a hearing on the merits of decision # 143226 is required.

CONCLUSIONES Y RAZONES: *Se permite la solicitud tardía de revisión de la Orden No. 24-UI-249400 presentada por la reclamante. Se permite la solicitud de la reclamante de reabrir la audiencia del 13 de febrero de 2024 a la 1:30 p.m., y se requiere otra audiencia sobre los méritos de la decisión # 143226.*

Late application for review. An application for review is timely if it is filed within 20 days of the date that the Office of Administrative Hearings (OAH) mailed the order for which review is sought. ORS 657.270(6); OAR 471-041-0070(1) (May 13, 2019). The 20-day filing period may be extended a “reasonable time” upon a showing of “good cause.” ORS 657.875; OAR 471-041-0070(2). “Good cause” means that factors or circumstances beyond the applicant’s reasonable control prevented timely filing. OAR 471-041-0070(2)(a). A “reasonable time” is seven days after the circumstances that prevented the timely filing ceased to exist. OAR 471-041-0070(2)(b). A late application for review will be dismissed unless it includes a written statement describing the circumstances that prevented a timely filing. OAR 471-041-0070(3).

The application for review of Order No. 24-UI-249400 was due by March 25, 2024. Claimant’s application for review was filed on March 26, 2024, and therefore was late. Claimant’s accompanying written statement, while focused largely on the merits of the reopen request, noted that it was the “2nd time I’m requestin[g] to reopen” and included a copy of the March 4, 2024 request to reopen and a fax cover sheet indicating that she had attempted to file it by fax on March 1, 2024. EAB Exhibit 2 at 2-4. It can be inferred from these documents that claimant’s application for review of Order No. 24-UI-249400 was delayed because she awaited a response from OAH to her timely request to reopen the hearing that the order failed to consider.

The expectation that claimant would receive a further order from OAH regarding Order No. 24-UI-248086—which, under ordinary circumstances, would not have been considered final at that time by virtue of claimant having requested to reopen the hearing within 20 days of its issuance—was not unreasonable. That OAH mistook the employer’s February 20, 2024 request to reopen as being from claimant, and that Order No. 24-UI-249400 was issued simultaneously with claimant filing her timely request to reopen, therefore causing OAH’s mistake to go unnoticed during the period in which Order No. 24-UI-249400 could be amended,² were circumstances beyond claimant’s reasonable control. It can be inferred that based on these circumstances claimant believed she should wait to file an application for review until Order No. 24-UI-249400 became final because she anticipated that OAH would issue a subsequent or amended order addressing her request to reopen. While claimant was mistaken in this belief, this mistake was the result of OAH’s mistakes, and was therefore excusable. Accordingly, claimant has shown good cause to extend the deadline for timely filing. The factors that prevented timely filing ceased on March 26, 2024, when claimant filed her application for review, and therefore it was filed within a “reasonable time.” For these reasons, claimant’s late application for review is allowed.

Request to reopen. 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 for missing the hearing in a written statement, which OAH shall consider in determining whether good cause exists for failing to appear at the hearing. OAR 471-040-0040(3).

² OAR 471-040-0030(5) (August 1, 2024) provides that an ALJ may issue an amended decision prior to the previous decision becoming final.

Claimant's request to reopen was filed March 4, 2024, within 20 days of the issuance of Order No. 24-UI-248086, and contained a written statement setting forth the reasons she failed to appear at the hearing. EAB Exhibit 1 at 1. The request therefore met the threshold requirements for consideration. The order under review denied a February 20, 2024 request to reopen filed by the employer, mistaking it as having been filed by claimant, because "[claimant] did not provide any information why she failed to appear at the previously scheduled hearing." Order No. 24-UI-249400 at 2-3. The record does not support this conclusion as the order under review did not consider the request to reopen that claimant filed.

The record shows that claimant, whose primary language is Spanish, simultaneously received three notices from OAH. Of these, two were notices of scheduled hearings, and the third changed the time of one of those two hearings. While the notices were sent in Spanish and English, they caused claimant confusion as to which access code to use at each hearing time. At the earlier hearing, claimant and the ALJ discussed that claimant would be attending the 1:30 p.m. hearing on decision # 143226, but when claimant attempted to attend at 1:30 p.m., the access code claimant entered would not work. Claimant misunderstood from the access code apparently not working and the discussion with the ALJ, which was interpreted in Spanish, that either the ALJ would call her, or the hearing would be rescheduled to another date. *See* EAB Exhibit 1 at 1. Claimant wrote that she "was at 2pm still on the line" and "was not very clear if I should call again." EAB Exhibit 1 at 1. Claimant has shown that she made substantial efforts to comply with the instructions of the hearing notice and attend the hearing, but was unable to comply with them, due to the language barrier and confusing instructions due to the multiple notices. Therefore, claimant's failure to appear at the hearing was the result of an excusable mistake, and claimant has shown good cause to reopen the hearing on decision # 143226.

For these reasons, claimant's request to reopen the February 13, 2024 1:30 p.m. hearing is allowed, and a hearing on the merits of decision # 143226 is required.

DECISION: Claimant's late application for review is allowed. Order No. 24-UI-249400 is set aside, and this matter remanded for further proceedings consistent with this order. *La Orden de la Audiencia 24-UI-249400 se pone a un lado, y esta materia se remite para otros procedimientos constantes con esta orden.*

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

DATE of Service: May 9, 2024

FECHA de Servicio: 9 de mayo de 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-249400 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

***NOTA:** La falta de cualquier parte de presentarse a la audiencia sobre la remisión no reinstalará la Orden de la Audiencia No. 24-UI-249400, ni devolverá esta orden a la EAB. Solamente una aplicación oportuna para revisión de la orden subsiguiente de la nueva audiencia volverá este caso a la 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

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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