

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0373

Reversed
Request to Reopen Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On October 11, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was disqualified from receiving unemployment insurance benefits effective July 9, 2023 (decision # 114422). Claimant filed a timely request for hearing. On October 23, 2023, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for November 6, 2023, at 8:15 a.m. On November 6, 2023, claimant failed to appear for the hearing, and ALJ Sachet-Rung issued Order No. 23-UI-240459 dismissing claimant's request for hearing for failure to appear and leaving decision # 114422 undisturbed. On November 7, 2023, claimant filed a timely request to reopen the November 6, 2023, hearing. On March 29, 2024, ALJ Contreras conducted a hearing, and on April 1, 2024, issued Order No. 24-UI-251258, denying claimant's request to reopen and leaving Order No. 23-UI-240459 and decision # 114422 undisturbed. On April 16, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant did not declare that he provided a copy of his 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 hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) On October 11, 2023, the Department mailed decision # 114422 to claimant's address on file with the Department. On October 18, 2023, claimant requested a hearing on decision # 114422.

(2) On October 23, 2023, OAH served notice of a hearing on decision # 114422 scheduled for November 6, 2023, at 8:15 a.m.

(3) On October 24 or 25, 2023, claimant received the notice of hearing. Claimant retained an attorney to represent him at the hearing. However, the attorney was not available on November 6, 2023. The attorney told claimant to request a postponement of the November 6, 2023, hearing due to the attorney not being available on that date.

(4) On November 1, 2, and 3, 2023, claimant called OAH's office phone line multiple times each day to request a postponement of the November 6, 2023, hearing. However, each time, claimant was unable to reach a representative. During one of the calls he made on November 2, 2023, claimant was directed to the phone line's voice mailbox and left a message requesting a postponement.

(5) On the morning of November 6, 2023, claimant felt unprepared to represent himself, did not want to appear for the hearing without his attorney, and was concerned that if he called in to join the hearing, he would be required to go forward without the attorney's assistance. Claimant believed that since he had left a message with OAH requesting a postponement an OAH representative would reach out to him at some point and the hearing would be rescheduled.

(6) Initially, claimant decided not to appear for the hearing. At 8:15 a.m. that morning the ALJ convened the hearing and claimant failed to appear. The ALJ waited about 10 minutes, then concluded the hearing without taking evidence. At about 9:00 a.m., claimant "got scared" and decided to call in to the hearing "thinking that if it was still going on, maybe there was something [he] could do." Audio Record at 21:10 to 21:40. By the time claimant called in, the ALJ had concluded the hearing.

(7) Shortly thereafter, an OAH representative called claimant. Claimant explained what had transpired and the representative advised that claimant's only option was to file a request to reopen the November 6, 2023, hearing. On November 7, 2023, claimant filed a request to reopen the November 6, 2023, hearing.

CONCLUSIONS AND REASONS: Claimant's request to reopen is allowed. Order No. 24-UI-251258 is reversed, Order No. 23-UI-240459 is cancelled, and a hearing on the merits of decision # 114422 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 order under review concluded that claimant did not establish good cause to reopen the November 6, 2023, hearing. Order No. 24-UI-251258 at 3-4. The record does not support this conclusion.

Claimant established good cause to reopen the November 6, 2023, hearing because an excusable mistake prevented him from appearing at the hearing. In the week before the hearing, claimant made numerous efforts to request a postponement but could not reach anyone in person. As of the morning of November

6, 2023, claimant had not obtained a postponement, despite having left a voicemail request for a postponement on November 2, 2023. The basis for claimant's postponement request was reasonable, given that it was based on the fact that claimant's attorney was not available on November 6, 2023, meaning that had claimant reached an OAH representative, his postponement request would likely have been granted. On the morning of November 6, 2023, claimant did not want to appear for the hearing without the assistance of his attorney, and though claimant knew the hearing was going forward, he mistakenly believed that since he left a message with OAH requesting a postponement, that an OAH representative would reach out to him and the hearing would be rescheduled. For that reason, claimant did not appear for the hearing.

Claimant's reason for failing to appear at the hearing constitutes an excusable mistake given that claimant's basis for requesting a postponement was reasonable and likely would have been granted, and, although claimant was mistaken that leaving a message with OAH requesting a postponement would cause the hearing to be rescheduled, claimant cannot be faulted for this misunderstanding. The record fails to show that the notice of hearing mentioned the administrative rule¹ governing hearing postponements or the effect, if any, that requesting a postponement in this fashion would have on the November 6, 2023, hearing date. For these reasons, claimant's failure to appear at the November 6, 2023, hearing was in the nature of an inability to follow directions despite substantial efforts to comply. The failure to appear at the hearing thus arose from an excusable mistake and claimant established good cause to reopen the hearing. Claimant request to reopen is allowed and claimant is entitled to a hearing on the merits of decision # 114422.

DECISION: Order No. 24-UI-251258 is set aside, Order No. 23-UI-240459 is cancelled, and a hearing on the merits of decision # 114422 is required.

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

DATE of Service: May 28, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-251258 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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¹ OAR 471-040-0021 (August 1, 2004).



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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