

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0377

Reversed
Request to Reopen Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On January 23, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged by the employer for misconduct and disqualified from receiving benefits effective December 3, 2023 (decision # 123523). Claimant filed a timely request for hearing. On February 8, 2024, the Office of Administrative Hearings (OAH) served a notice of hearing scheduled for February 23, 2024. On February 23, 2024, claimant failed to appear at the hearing, and ALJ Contreras issued Order No. 24-UI-248717 dismissing the hearing request due to claimant's failure to appear, leaving decision # 123523 undisturbed. On February 27, 2024, claimant filed a timely request to reopen the hearing. ALJ Kangas considered claimant's request, and on April 11, 2024, issued Order No. 24-UI-252028, denying the request and leaving Order No. 24-UI-248717 undisturbed. On April 18, 2024, claimant filed an application for review of Order No. 24-UI-252028 with the Employment Appeals Board (EAB).

EVIDENTIARY MATTER: Claimant included with their application for review a statement that elaborated upon the information contained in claimant's request to reopen. Review of the information contained in the statement included with claimant's application for review shows that it is relevant and material to claimant's reopen request and necessary to complete the record. As such, EAB is receiving the information into evidence pursuant to OAR 471-041-0090(1)(a) (May 13, 2019). The evidence 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.

FINDINGS OF FACT: (1) On February 8, 2024, OAH mailed notice of a hearing on decision # 123523, scheduled for February 23, 2024, to claimant's address on file with OAH. Exhibit 3 at 3. Claimant's address on file with OAH was a residence located on Hawthorne Street in Sweet Home, Oregon. Exhibit 3 at 3.

(2) Claimant received the notice of hearing shortly after it was mailed. Claimant made note of the date and time of the hearing on a sticky note and placed it on their refrigerator as a reminder. EAB Exhibit 1 at 1.

(3) On February 17, 2024, claimant began moving from their address on Hawthorne Street to a new residence located elsewhere in Sweet Home. In the process of moving, claimant lost the notice of hearing. EAB Exhibit 1 at 1.

(4) On the morning of February 23, 2024, claimant was prepared to appear at the date and time of the hearing but mistakenly believed they would be called by the ALJ, who would bring claimant into a conference call for the hearing. EAB Exhibit 1 at 1. Having lost the notice of hearing, claimant did not have anything to check for reference regarding the procedure of the February 23, 2024, hearing, and did not know that the notice required the parties to call into the hearing themselves.

(5) On February 23, 2024, claimant failed to appear for the hearing because they were expecting to receive a call from the ALJ bringing them into the hearing rather than to call into the hearing themselves.

(6) On February 27, 2024, claimant filed a timely request to reopen the February 23, 2024, hearing.

CONCLUSIONS AND REASONS: Claimant's request to reopen is allowed. Order No. 24-UI-252028 is reversed and a hearing on the merits of decision # 123523 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 February 23, 2024 hearing because they failed to show that their mistaken belief that the ALJ would call them was an excusable mistake or a factor beyond their control. Order No. 24-UI-252028 at 2-3. In particular, the order stated that it was within claimant's control to read the instructions on the notice of hearing directing claimant to call into the hearing. Order No. 24-UI-252028 at 2. Also, the order stated that claimant's "mistakenly thinking the [ALJ] would call no doubt contributed to [claimant] missing the hearing," but that this did not constitute an excusable mistake because, among other things, it did not arise from an inability to follow directions despite substantial efforts to comply. Order No. 24-UI-252028 at 3. The record does not support these conclusions and instead shows that claimant established good cause to reopen the February 23, 2024, hearing.

Claimant's mistake in believing they would be called by the ALJ was the result of an inability to follow directions despite substantial efforts to comply. Claimant could not follow the instructions on the notice of hearing to call into the hearing because they had lost the notice of hearing after they started to move

to their new residence beginning February 17, 2024. Nevertheless, claimant did make substantial efforts to comply. Claimant wrote down the date and time of the hearing on a sticky note and placed it on their refrigerator as a reminder. Claimant was prepared to participate in the hearing on the morning of February 23, 2024 but mistakenly believed the ALJ would call them. Because this mistake was the result of an inability to follow directions despite substantial efforts to comply, the mistake was excusable. Claimant's failure to appear therefore arose from an excusable mistake and claimant established good cause to reopen the hearing.

Accordingly, claimant's request to reopen is allowed, and claimant is entitled to a hearing on the merits of decision # 123523.

DECISION: Order No. 24-UI-252028 is set aside and a hearing on the merits of decision # 123523 is required.

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

DATE of Service: May 29, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-252028 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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