

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0389

Reversed
Late Request to Reopen Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On October 3, 2023, 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 July 16, 2023 (decision # 102948). Claimant filed a timely request for hearing. On November 2, 2023, ALJ Enyinnaya conducted a hearing at which the employer failed to appear, and on November 29, 2023, issued Amended Order No. 23-UI-242121, reversing decision # 102948 by concluding that claimant was discharged by the employer, but not for misconduct, and was not disqualified from receiving benefits based on the work separation.¹

On December 19, 2023, Order No. 23-UI-242121 became final without the employer having filed a request to reopen the November 2, 2023, or an application for review with the Employment Appeals Board (EAB). On December 27, 2023, the employer filed a late request to reopen the November 2, 2023, hearing. ALJ Scott considered the request, and on March 27, 2024, issued Order No. 24-UI-250970, denying the employer's late request to reopen and leaving Order No. 23-UI-242121 undisturbed. On April 5, 2024, the employer filed a timely application for review of Order No. 24-UI-250970 with 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 employer's statement explaining why the request to reopen the November 2, 2023, hearing was late, and has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. This evidence is admitted as necessary to complete the record. 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.

¹ This order amended and replaced Order No. 23-UI-240821, issued November 9, 2023, to characterize the separation as a discharge, not for misconduct, rather than a voluntary leaving with good cause.

FINDINGS OF FACT: (1) On October 19, 2023, notice was mailed to the employer's address of record on file with the Department, stating that a hearing on claimant's work separation was scheduled for November 2, 2023. The employer received and read this notice on or shortly after October 19, 2023.

(2) On October 23, 2023, the Department mailed a letter to the employer stating, "Your account will be relieved of charges for benefits paid on [claimant's claim] because this individual left your employ voluntarily without good cause." EAB Exhibit 1 at 5. The letter further stated, "If an appeal is filed, and a hearing is held, the decision resulting from the hearing could affect the relief of charges to your account." EAB Exhibit 1 at 5.

(3) The employer understood the issuance of the October 23, 2023, letter to mean that the issue of whether claimant's work separation was disqualifying had been determined and therefore the November 2, 2023, hearing would not be held unless claimant filed another appeal. For this reason, the employer did not attend the November 2, 2023, hearing.

(4) On November 9, 2023, Order No. 23-UI-240821 was mailed to the employer's address of record on file with the Office of Administrative Hearings (OAH). The employer timely received this order.

(5) On November 23, 2023, the employer attempted to file a request to reopen the November 2, 2023, hearing. OAH did not receive this request. The employer was unaware that the request to reopen had not been received or filed.

(6) On December 27, 2023, the employer filed a late request to reopen their prior request had not been had not been acknowledged by OAH.

CONCLUSIONS AND REASONS: The employer's late request to reopen the November 2, 2023, hearing is allowed and the matter is remanded for a reopened hearing on the merits of decision # 102948.

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. 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 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 November 2, 2023, hearing was due by December 19, 2023. Because the employer's request to reopen was filed December 27, 2023, the request was late. The order under review denied the request to reopen because the employer did not explain why the request was filed late. Order No. 24-UI-242121 at 3. With the admission of EAB Exhibit 1, the record shows that the employer had good cause to file the request to reopen late.

The employer wrote in their April 5, 2024, statement, “I filed my appeal paperwork on November 23rd to have the case reopen[ed]. When I didn’t receive a confirmation from the Employment Office, I filed a 2nd appeals paperwork again on December 15th.” EAB Exhibit 1 at 1. This suggests that the employer attempted to file a timely request to reopen on November 23, 2023, and for unknown reasons OAH did not receive it. As the employer would not have known that it was not received and filed, it can be inferred that they were unaware that the request to reopen postmarked December 27, 2023, would be considered filed late, or that they were required to explain why it was being filed late. Therefore, EAB Exhibit 1 is properly admitted so that the employer’s explanation for the late filing can be considered. The failure of OAH to receive the November 23, 2023, request to reopen was, more likely than not, a factor beyond the employer’s reasonable control that prevented timely filing. That factor did not cease until December 27, 2023, when the employer mailed a second request to reopen, which was received by OAH. Accordingly, the employer has shown good cause for the late filing, and filed their late request to reopen within a reasonable time.

Further, the record shows that the employer failed to appear at the hearing due to an excusable mistake. The order under review concluded that the employer did not show good cause for failing to appear at the November 2, 2023, hearing because “confusion about the process and [uncertainty] as to whether [the employer] had been relieved of charges for this claim” did not constitute a factor beyond their reasonable control or an excusable mistake that prevented attendance at the hearing. Order No. 24-UI-250970 at 4-5. The record does not support this conclusion because after the employer received notice of the November 2, 2023, hearing, they received a letter from the Department that they mistakenly understood to mean that claimant’s work separation disqualification had been decided in the employer’s favor, and that the scheduled hearing would therefore not be held.

The October 23, 2023, determination letter regarding relief of charges stated, “If an appeal is filed, and a hearing is held, the decision resulting from the hearing could affect the relief of charges to your account.” EAB Exhibit 1 at 5. Because the employer knew that claimant had already filed an appeal regarding the work separation and a hearing had been scheduled, it can be inferred that the employer misunderstood the letter to mean that a hearing on the separation would not be held unless a *new* appeal was filed by claimant following issuance of the October 23, 2023 letter, which appeared to the employer to contain a determination of claimant’s work separation disqualification appeal. As the language in the October 23, 2023, letter was ambiguous as to the extent of what had been determined and whether a hearing on the separation that had already been scheduled would still take place, the employer’s interpretation of it was not unreasonable under the circumstances. Therefore, the employer’s mistake as to whether the November 2, 2023, hearing would be held, in light of the October 23, 2023, relief of charges determination letter, is excusable. Accordingly, the employer has shown good cause to reopen the hearing.

For these reasons, the employer’s late request to reopen the November 2, 2023, hearing is allowed, and the matter is remanded for a reopened hearing on the merits of decision # 102948.

DECISION: Order No. 24-UI-250970 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: May 20, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-250970 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 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
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