

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0415

Request to Reopen Allowed
Reversed & Remanded

PROCEDURAL HISTORY: On April 18, 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 February 26, 2023 (decision # 140333). On May 8, 2023, decision # 140333 became final without claimant having filed a request for hearing. On May 10, 2023, claimant filed a late request for hearing on decision # 140333. On October 12, 2023, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for October 23, 2023, at 9:30 a.m. on whether claimant's late request for hearing on decision # 140333 should be allowed, and if so, the merits of decision # 140333. On October 23, 2023, claimant failed to appear for the hearing, and ALJ Wardlow issued Order No. 23-UI-239277, dismissing the hearing request on decision # 140333 due to claimant's failure to appear and leaving decision # 140333 undisturbed. On October 24, 2023, claimant filed a timely request to reopen. On April 10, 2024, ALJ Lucas conducted a hearing, at which the employer failed to appear and at which the Department submitted an Attestation in lieu of attending. On April 16, 2024, ALJ Lucas issued Order No. 24-UI-252349, denying claimant's request to reopen and leaving Order No. 23-UI-239277 undisturbed. On May 1, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant did not declare that she provided a copy of her 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 her 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 April 18, 2023, the Department mailed decision # 140333 to claimant's address on file with the Department. On May 8, 2023, decision # 140333 became final without claimant having filed a request for hearing. On May 10, 2023, claimant filed a late request for hearing on decision # 140333. Exhibit 2 at 2.

(2) From approximately July 2023 until October 20, 2023, claimant's mailing address was the address of a relative in Grass Valley, California. The Grass Valley address was on file with OAH as claimant's address of record.

(3) On October 12, 2023, OAH mailed claimant notice of a hearing regarding whether claimant's late request for hearing on decision # 140333 should be allowed, and if so, the merits of that decision. The notice scheduled the hearing for October 23, 2023, at 9:30 a.m. OAH mailed the notice to claimant's address on file with OAH, which was the Grass Valley address. The notice of hearing was returned by the U.S. Postal Service as undeliverable.

(4) On October 17, 2023, claimant emailed OAH to inquire about the status of her hearing request. On that date, an OAH representative sent claimant a response email stating, "looks like we have you scheduled for a hearing on 10/23/23 at 9:30," and providing the telephone number and access code needed for claimant to appear at the hearing. Audio Record at 31:30.

(5) When the OAH representative advised by email that the hearing was scheduled for "10/23/23 at 9:30," claimant wrote the hearing date incorrectly in her notes as being scheduled for October 24, 2023.

(6) On October 23, 2023, claimant failed to appear for the hearing because she mistakenly believed that the hearing was scheduled for the next day. Claimant had a job interview that morning, then became ill briefly. That afternoon, after recovering from the illness, claimant began to prepare for the hearing. Claimant looked at the OAH representative's email, and realized she had missed the hearing that morning.

(7) The same day, October 23, 2023, claimant filed a request to reopen the hearing. Exhibit 7 at 2; Exhibit 5 at 1.

CONCLUSIONS AND REASONS: Claimant's request to reopen is allowed. Order No. 24-UI-252349 is reversed, Order No. 23-UI-239277 is cancelled, and the matter remanded for a hearing on whether claimant's late request for hearing should be allowed and if so, the merits of decision # 140333.

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).

Claimant established good cause to reopen the October 23, 2023 hearing. Claimant did not receive the notice scheduling the hearing for October 23, 2023. Though the notice was mailed to claimant's address on file with OAH while that address was still a current address for claimant, the notice was returned by the U.S. Postal Service as undeliverable. Claimant learned that the hearing was scheduled only because she emailed OAH on October 17, 2023 inquiring about the status of her hearing request. On that date, an OAH representative sent claimant a response email stating, "looks like we have you scheduled for a

hearing on 10/23/23 at 9:30,” and providing the phone number and access code needed for claimant to appear at the hearing. Audio Record at 31:30. Claimant then incorrectly wrote the date of the hearing in her notes as October 24, 2023, and did not realize her mistake until later in the day on October 23, 2023, after she had already missed the 9:30 a.m. hearing that morning.

The record shows that claimant never received the notice of the hearing in the first place, made substantial efforts to comply given that she learned about the date and time of the hearing due to her own initiative in emailing OAH, but was unable to appear at the hearing because she wrote the date from the OAH representative’s email incorrectly. These facts are sufficient to show that claimant was unable to follow directions despite substantial efforts to comply and therefore establish that claimant’s failure to appear at the hearing arose from an excusable mistake. Accordingly, claimant’s request to reopen is allowed, and claimant is entitled to a hearing regarding whether her late request for hearing should be allowed and if so, the merits of decision # 140333.

DECISION: Order No. 24-UI-252349 is set aside, Order No. 23-UI-239277 is cancelled, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: June 11, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-252349 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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