

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0422

Reversed ~ Orden Revocada

Late Request to Reopen Allowed ~ La Aplicación Tardía Para Reabrir la Audiencia Es Permitida
Merits Hearing Required ~ Se Requiere una Audiencia Sobre los Méritos

Esta decisión concluye que la aplicación tardía de la reclamante para reabrir la audiencia del 22 de mayo de 2023 es permitida y se devuelve el asunto para una audiencia sobre los méritos de la decisión # 132912. Partes de esta decisión están traducidas al español. Sin embargo, hay información importante en esta decisión que está solo en inglés sobre por qué la Junta de Apelaciones de Empleo (EAB, por sus siglas en inglés) decidió permitir la aplicación tardía y devolver el asunto para una audiencia sobre decisión # 132912. Si necesita interpretación en español de la parte de esta decisión que está en inglés, puede obtenerla llamando a la EAB al 503-278-2077 y solicitando un intérprete de español.¹

PROCEDURAL HISTORY: On April 21, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and was therefore disqualified from receiving unemployment insurance benefits effective March 5, 2023 (decision # 132912). Claimant filed a timely request for hearing. On May 10, 2023, notice was mailed to the parties that a hearing was scheduled for May 22, 2023. On May 22, 2023, claimant failed to appear at the hearing, and on May 30, 2023, ALJ Monroe issued Order No. 23-UI-226419, dismissing claimant's request for hearing due to her failure to appear. On June 20, 2023, Order No. 23-UI-226419 became final without claimant having filed a request to reopen the May 22, 2023 hearing.

On July 27, 2023, claimant filed a late request to reopen the May 22, 2023 hearing. On February 12, 2024, the Office of Administrative Hearings (OAH) mailed a letter to the parties stating that Order No.

¹ This decision concludes that claimant's late request to reopen the May 22, 2023 hearing is allowed and the matter is remanded for a hearing on the merits of decision # 132912. 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 good cause was shown to reopen the late request to reopen and remanding the matter for a hearing on decision # 132912. 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.

23-UI-226419 was vacated and that a hearing would be scheduled to determine whether claimant's late request to reopen the May 22, 2023 hearing should be allowed and, if so, the merits of decision # 132912. On April 23, 2024, ALJ Frank conducted a hearing interpreted in Spanish, and on May 1, 2024 issued Order No. 24-UI-253294, denying claimant's late request to reopen the May 22, 2023 hearing and re-dismissing her request for hearing due to her failure to appear at that hearing.² On May 3, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

HISTORIAL PROCESAL: *El 21 de abril de 2023, el Departamento de Empleo de Oregón (el Departamento) mandó por correo una decisión administrativa que concluye que la reclamante fue despedida por mala conducta y, por lo tanto, fue descalificada para recibir beneficios del seguro de desempleo a partir del 5 de marzo de 2023 (decisión # 132912). La reclamante presentó una solicitud de audiencia a tiempo. El 10 de mayo de 2023, se envió por correo a las partes un aviso de que se programó una audiencia para el 22 de mayo de 2023. El 22 de mayo de 2023, la reclamante no se presentó a la audiencia, y el 30 de mayo de 2023, la jueza administrativa Monroe emitió la Orden No. 23-UI-226419, desestimando la solicitud de audiencia de la reclamante debido a su falta de asistir a la audiencia. El 20 de junio de 2023, la Orden No. 23-UI-226419 se convirtió en final sin que la reclamante hubiera presentado una aplicación para reabrir la audiencia del 22 de mayo de 2023.*

El 27 de julio de 2023, la reclamante presentó una aplicación tardía para reabrir la audiencia del 22 de mayo de 2023. El 12 de febrero de 2024, la Oficina de Audiencias Administrativas (OAH, por sus siglas en inglés) envió una carta a las partes indicando que la Orden No. 23-UI-226419 fue anulada y que se programaría una audiencia para determinar si se debe permitir la aplicación tardía de la reclamante de reabrir la audiencia del 22 de mayo de 2023 y, de ser así, los méritos de la decisión # 132912. El 23 de abril de 2024, el juez Frank llevó a cabo una audiencia interpretada en español. El 1 de mayo de 2024 el juez emitió la Orden No. 24-UI-253294, denegando la aplicación tardía de la reclamante de reabrir la audiencia del 22 de mayo de 2023 y desestimando nuevamente su solicitud de audiencia debido a que no se presentó a esa audiencia. El 3 de mayo de 2024, la reclamante presentó una solicitud de revisión de la Orden No. 24-UI-253294 ante la Junta de Apelaciones de Empleo (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 claimant's late request to reopen, with English translation, and 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.

ASUNTO DE PRUEBAS: *EAB ha considerado evidencia adicional para tomar esta decisión de acuerdo con OAR 471-041-0090(1) (13 de mayo de 2019). La evidencia adicional es la aplicación tardía de la reclamante para reabrir la audiencia, con traducción al inglés. La evidencia adicional ha sido marcada como EAB Exhibit 1, y se le ha dado una copia a las partes con esta decisión. Cualquier parte que se oponga a la admisión de EAB Exhibit 1 tiene que someter su objeción a esta oficina por escrito, y tiene que incluir la base de su objeción, entre diez días de cuando esta decisión fue enviada.*

² Order No. 24-UI-253294 stated that it left Order No. 23-UI-226419 undisturbed. Order No. 24-UI-253294 at 3. However, that order had already been vacated by OAH and therefore the effect of Order No. 24-UI-253294 was to re-dismiss the late request to reopen.

OAR 471-041-0090(2). A menos que su objeción sea recibida y afirmada, el hecho reconocido permanecerá en el expediente.

FINDINGS OF FACT: (1) On May 10, 2023, notice was mailed to claimant that a telephone hearing was scheduled for May 22, 2023 at 10:45 a.m. The notice was written in English and Spanish and contained both the telephone number for the Office of Administrative Hearings (OAH) and the separate telephone number to connect to the hearing. Claimant received the notice shortly after it was mailed.

(2) Claimant, whose primary language is Spanish, did not understand the directions in the notice for participating in the telephone hearing. She called OAH several times for assistance but was unable to reach anyone. On May 15, 2023, she went to a WorkSource office to request assistance in understanding the notice. Despite speaking with a representative about the notice, claimant continued to call only the OAH number, rather than the number printed on the notice to use to join the hearing, and for that reason did not connect to the telephone hearing on the hearing date.

(3) Order No. 23-UI-226419, mailed to claimant on May 30, 2023, stated, “If you did not appear at the hearing, you may request to reopen the hearing. Your request to reopen the hearing must . . . be filed within 20 days of when the order from the hearing you missed was mailed[.]” Exhibit 3 at 3. Order No. 23-UI-226419 also contained a Spanish translation of this advisement. Claimant received Order No. 23-UI-226419 shortly after it was mailed.

(4) Claimant did not understand the right to request reopening of the hearing as stated in the order, or the time limit for doing so. Claimant repeatedly called OAH to request assistance in understanding the document and left several voicemails without reaching anyone.

(5) On July 27, 2023, claimant mailed a letter to OAH in Spanish which, translated to English, stated that she had been calling the OAH telephone number, but “you send me to voicemail and you have not answered me that way either,” and requested a call from OAH “as soon as possible.” EAB Exhibit 1 at 1. OAH construed this as a late request to reopen the May 22, 2023 hearing.

CONCLUSIONS AND REASONS: Claimant’s late request to reopen the May 22, 2023 hearing is allowed, and the matter is remanded for a hearing on the merits of decision # 132912.

CONCLUSIONES Y RAZONES: *Se permite la aplicación tardía de la reclamante de reabrir la audiencia del 22 de mayo de 2023 y se devuelve el asunto para una audiencia nueva sobre los méritos de la decisión # 132912.*

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 May 22, 2023 hearing was due by June 20, 2023. Because claimant filed her request to reopen on July 27, 2023, the request was late. The order under review concluded that claimant did not show that her late filing was due to an excusable mistake because she “could only speculate as to reasons for the delay.” Order No. 24-UI-253294 at 3. The record does not support this conclusion.

Claimant received Order No. 23-UI-226419 shortly after it was mailed. Claimant’s late request to reopen contained a written statement suggesting that her repeated telephone calls to OAH for assistance in understanding Order No. 23-UI-226419 and her right to request reopening of the hearing had gone unanswered. *See* EAB Exhibit 1 at 1. It can be inferred from this that claimant did not understand the information in Order No. 23-UI-226419 which explained the procedure and time limit for reopening the hearing, and that claimant was delayed in filing the request to reopen while she sought assistance from OAH that was never provided. Claimant’s attempts to seek assistance rather than filing the request to reopen demonstrated an inability to follow the directions in the order despite substantial efforts to comply by seeking help from OAH. Accordingly, claimant has shown that the late filing was due to an excusable mistake. The circumstance that prevented timely filing ceased on July 27, 2023, when claimant mailed a letter to OAH requesting assistance that was construed as a late request to reopen, and the late request was filed within a reasonable time. The late request to reopen therefore met the threshold requirements for consideration.

As with the reason for claimant having filed the request to reopen late, claimant’s reason for missing the May 22, 2023 hearing also involved an inability to follow directions despite substantial efforts to comply. Claimant testified that she received the May 22, 2023 hearing notice shortly after it was mailed. Transcript at 4. She further testified that she repeatedly telephoned one of the two numbers printed on the notice for assistance in understanding it, but her calls went unanswered and messages unreturned. Transcript at 4-5. Claimant’s testimony suggested that she therefore went to a WorkSource office for assistance on May 15, 2023, but even after speaking with a representative there continued to believe that she should dial the number for OAH on the day of the hearing rather than dialing the number to connect to the hearing. Transcript at 6. The precise reason for claimant’s continued inability to follow directions on attending the hearing is unclear from the record, but it is apparent that claimant made her best efforts to attend the hearing by repeatedly seeking assistance in understanding the directions and attempting to call in to the hearing at the telephone number she believed was correct. Therefore, claimant failed to attend the hearing due to an excusable mistake and good cause has been shown to reopen the hearing.

For these reasons, claimant’s late request to reopen the May 22, 2023 hearing is allowed and a hearing on the merits of decision # 132912 is required.

DECISION: Order No. 24-UI-253294 is set aside, and this matter remanded for further proceedings consistent with this order. *La Orden de la Audiencia 24-UI-253294 se pone a un lado, y esta materia se remite para otros procedimientos constantes con esta orden.*

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

DATE of Service: June 14, 2024

FECHA de Servicio: 14 de junio de 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-253294 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-253294, 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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***NOTA:** Usted puede apelar esta decisión presentando una solicitud de revisión judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) dentro de los 30 días siguientes a la fecha de notificación indicada arriba. Vea ORS 657.282. Para obtener formularios e información, puede escribir a la Corte de Apelaciones de Oregon, Sección de Registros (Oregon Court of Appeals/Records Section), 1163 State Street, Salem, Oregon 97310 o visite el sitio web en courts.oregon.gov. En este sitio web, hay información disponible en español.*

Por favor, ayúdenos mejorar nuestros servicios completando un formulario de encuesta sobre nuestro servicio de atención al cliente. Para llenar este formulario, puede visitar <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. Puede acceder a la encuesta usando una computadora, tableta, o teléfono inteligente. Si no puede llenar el formulario sobre el internet, puede comunicarse con nuestra oficina para una copia impresa de la encuesta.



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

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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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