

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0432

Affirmed
Late Request to Reopen Denied

PROCEDURAL HISTORY: On February 1, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not actively seeking work during the weeks of November 14, 2021, through January 29, 2022 (weeks 45-21 through 04-22) and was therefore ineligible to receive unemployment insurance benefits for those weeks (decision # 112906). On February 22, 2022, decision # 112906 became final without claimant having filed a request for hearing. On November 7, 2022, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on March 13, 2023, issued Order No. 23-UI-218815, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by March 27, 2023. On March 27, 2023, claimant filed a timely response to the appellant questionnaire. On April 14, 2023, the Office of Administrative Hearings (OAH) mailed a letter to claimant stating that Order No. 23-UI-218815 was vacated and that a hearing would be scheduled to determine whether claimant's late request for hearing should be allowed and, if so, the merits of decision # 112906.

On April 25, 2023, notice was mailed to claimant that a hearing was scheduled for May 9, 2023. On May 9, 2023, claimant failed to appear at the hearing, and ALJ Ramey issued Order No. 23-UI-224338, dismissing claimant's late request for hearing due to his failure to appear. On May 30, 2023, Order No. 23-UI-224338 became final without claimant having filed a request to reopen the hearing. On December 18, 2023, claimant filed a late request to reopen the May 9, 2023, hearing.

On April 16, 2024, ALJ Frank conducted a hearing, and on April 24, 2024, issued Order No. 24-UI-252892 denying claimant's late request to reopen and leaving Order No. 23-UI-224338 undisturbed. On May 6, 2024, claimant filed an application for review of Order No. 24-UI-252892 with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant's argument contained information that was not part of the hearing record and was not relevant to the issue of claimant's late request to reopen the May 9, 2023, hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information

received into evidence at the hearing when reaching this decision. EAB considered claimant's argument to the extent it was relevant and based on the record.

In his argument, claimant asserted that the delay in filing the request to reopen was attributable to OAH's failure to answer or return his calls "[o]ver the course of months" following the missed hearing. Claimant's Argument at 1. However, the record shows that claimant knew on May 9, 2023, that he missed the hearing, and that at some point thereafter he received a copy of Order No. 23-UI-224338, issued May 9, 2023, dismissing his request for hearing due to his failure to appear. Order No. 23-UI-224338 stated, "If you did not appear at the hearing, you may request to reopen the hearing." Exhibit 5 at 3. It further stated, "Your request to reopen the hearing must . . . be filed within 20 days of when the order from the hearing you missed was mailed, or else show good cause. . . *[and show] that you filed your reopen request within seven days of when those factors or circumstances [constituting good cause] ceased to exist.*" Exhibit 5 at 3 (italics added).

The potential good cause factors or circumstances that prevented timely filing ceased no later than when claimant received Order No. 23-UI-224338, which, more likely than not, occurred before December 2023. Therefore, though claimant may have had good cause for missing the hearing, and good cause for not filing his request to reopen that hearing by the May 30, 2023, deadline, he did not show that his late request to reopen, filed December 18, 2023, was filed within seven days after the factors or circumstances preventing filing ceased. Accordingly, his late request to reopen the May 9, 2023, hearing was properly denied.

EAB considered the entire hearing record. EAB agrees with Order No. 24-UI-252892's findings of fact, reasoning, and conclusion that claimant did not file his late request to reopen the May 9, 2023, hearing within a seven-day "reasonable time" after the good cause circumstances that prevented timely filing ceased. Pursuant to ORS 657.275(2), Order No. Order No. 24-UI-252892 is **adopted**.

DECISION: Order No. 24-UI-252892 is affirmed.

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

DATE of Service: June 18, 2024

NOTE: You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at courts.oregon.gov. Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

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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.

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