

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0455

Reversed
Request to Reopen Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On February 6, 2024, 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 November 26, 2023 (decision # 81649). Claimant filed a timely request for hearing. On March 21, 2024, notice was mailed to the parties that a hearing was scheduled for April 4, 2024, at 8:15 a.m. Claimant failed to appear at the hearing, and on April 4, 2024, ALJ Adamson issued Order No. 24-UI-251521, dismissing claimant's request for hearing due to her failure to appear. On April 8, 2024, claimant filed a timely request to reopen the hearing. On April 26, 2024, ALJ Goodrich conducted a hearing, and on May 3, 2024, issued Order No. 24-UI-253422, denying claimant's request to reopen and leaving Order No. 24-UI-251521 undisturbed. On May 22, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant's argument in reaching this decision.

FINDINGS OF FACT: (1) On March 21, 2024, notice was mailed to claimant at her address of record on file with the Department that a telephone hearing would be held on April 4, 2024, at 8:15 a.m. Claimant received the notice shortly after it was mailed.

(2) Claimant retained an attorney to represent her in the appeal prior to the hearing date and provided him with the date and time of the hearing. Claimant's attorney's office mistakenly calendared the hearing for 8:30 a.m. rather than 8:15 a.m.

(3) On April 4, 2024, claimant arrived at her attorney's office at approximately 8:00 a.m. to participate in the 8:15 a.m. telephone hearing, as planned. Claimant turned off her mobile phone so as not to be interrupted by it during the hearing and was escorted to a conference room to await the start of the hearing. The time of day was not displayed in the conference room or readily visible to claimant through other means.

(4) At approximately 8:30 a.m., claimant's attorney attempted to connect to the telephone hearing with claimant but the time for the hearing had passed. Claimant filed a request to reopen the hearing on April 8, 2024.

CONCLUSIONS AND REASONS: Claimant's request to reopen the April 4, 2024, hearing is allowed and a hearing on the merits of decision # 81649 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).

Claimant filed a request to reopen the April 4, 2024, hearing, which set forth the reason for missing the hearing, within 20 days of the date the order dismissing claimant's request for hearing due to her failure to appear was issued. Exhibit 3 at 1-2. Accordingly, claimant's request meets the threshold requirements for consideration.

Claimant failed to appear at the April 4, 2024, hearing because she relied on her attorney to call into the telephone hearing to make her appearance at the scheduled time, but the attorney did not do so. The order under review concluded that claimant's reliance on her attorney did not constitute an excusable mistake. Order No. 24-UI-253422 at 3. The record does not support this conclusion.

The record shows that claimant missed the hearing due to reasonable reliance on another. Claimant testified that she retained an attorney to represent her at the hearing, provided him with the correct date and time from the hearing notice, and appeared at his office prior to the scheduled hearing time. Audio Record at 16:08, 19:20. Claimant testified that she was taken to a conference room in the office where the time was not displayed, and therefore relied on her attorney to call into the hearing at the scheduled time. Audio Record at 19:44, 22:02, 25:19. The attorney's failure to call in at the correct time due to a "calendaring error" caused her to miss the hearing. Exhibit 3 at 2. Because claimant's reasonable reliance on her attorney under these circumstances to connect her to the telephone hearing at the correct time caused her to miss the hearing, claimant has shown that she missed the hearing due to an excusable mistake. Accordingly, claimant's request to reopen the April 4, 2024, hearing is allowed, and a hearing on the merits of decision # 81649 is required.

DECISION: Order No. 24-UI-253422 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: June 27, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-253422 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



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 دستورالعمل 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
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.