

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0456

Reversed

*Requests to Reopen December 22, 2022 and August 10, 2023 Hearings Allowed
Hearing on Request to Reopen January 18, 2022 Hearing Required*

PROCEDURAL HISTORY: On December 6, 2021, 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 October 31, 2021 (decision # 103316). Claimant filed a timely request for hearing. On January 7, 2022, notice was mailed to the parties that a hearing was scheduled for January 18, 2022. On January 18, 2022, ALJ Blam conducted a hearing at which the employer failed to appear, and on January 19, 2022 issued Order No. 22-UI-184354, reversing decision # 103316 by concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving unemployment insurance benefits based on the work separation. On February 8, 2022, the employer filed a timely request to reopen the January 18, 2022 hearing.

On December 8, 2022, notice was mailed to the parties that a hearing was scheduled for December 22, 2022. On December 22, 2022, ALJ Blam conducted a hearing at which claimant failed to appear, and on December 29, 2022 issued Order No. 22-UI-211222, allowing the employer's request to reopen the January 18, 2022 hearing, cancelling Order No. 22-UI-184354, and affirming decision # 103316 on the merits. On January 17, 2023, claimant filed a timely request to reopen the December 22, 2022 hearing.

On July 27, 2023, notice was mailed to the parties that a hearing was scheduled for August 10, 2023. On August 10, 2023, claimant failed to appear at the hearing and ALJ Ramey issued order No. 23-UI-232901, denying claimant's request to reopen the December 22, 2022 hearing and leaving Order No. 22-UI-211222 undisturbed. On August 20, 2023, claimant filed a timely request to reopen the August 10, 2023 hearing.

On April 24, 2024, ALJ Blam conducted a hearing at which the employer failed to appear, and on May 3, 2024 issued Order No. 24-UI-253488, denying claimant's request to reopen the August 10, 2023 hearing and leaving Order No. 23-UI-232901 undisturbed. On May 23, 2024, claimant filed an application for review of Order No. 24-UI-253488 with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On January 19, 2022, ALJ Blam issued Order No. 22-UI-184354, reversing decision # 103316 and allowing claimant unemployment benefits which that administrative decision had previously disqualified her from receiving. On February 8, 2022, the employer filed a request to reopen the hearing on which Order No. 22-UI-184354 was based.

(2) On December 8, 2022, notice was mailed to claimant’s address of record on file with the Office of Administrative Hearings (OAH) that a hearing on the employer’s request to reopen was scheduled for December 22, 2022. Between December 8, 2022 and December 22, 2022, claimant checked her mail “every couple of days” and was not out of town “for any length of time.” Audio Record at 18:30, 19:58. Claimant received the hearing notice on approximately December 23 or 24, 2022. Claimant did not attend this hearing because she was unaware that it was being held. On January 17, 2023, claimant filed a timely request to reopen the December 22, 2022 hearing.

(3) On July 27, 2023, notice was mailed to claimant’s address of record on file with OAH that a hearing on her request to reopen the December 22, 2022 hearing was scheduled for August 10, 2023. Claimant did not receive this notice and did not attend the hearing because she was unaware it was being held. On August 30, 2023, claimant filed a timely request to reopen the August 10, 2023 hearing.

CONCLUSIONS AND REASONS: Claimant’s requests to reopen the August 10, 2023 hearing and December 22, 2022 hearing are allowed. Claimant is entitled to a reopened hearing to determine whether the employer’s request to reopen the January 18, 2022 hearing should be allowed and, if so, the merits of decision # 103316.

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).

Order No. 22-UI-211222 and Order No. 23-UI-232901 were issued on December 29, 2022 and August 10, 2023, respectively, after claimant failed to appear at the December 22, 2022 and August 10, 2023 hearings. Claimant filed requests to reopen those hearings on January 17, 2023 and August 30, 2023, respectively, which was within 20 days of the issuance of the orders following those hearings. Each request contained a written statement explaining why claimant missed the respective hearing. Therefore, claimant has met the threshold requirements for consideration as to both requests to reopen.

August 10, 2023 hearing. Claimant failed to appear at the August 10, 2023 hearing because she did not receive the hearing notice in the mail and was unaware that the hearing was taking place. The order under review concluded that claimant failed to rebut the statutory presumption¹ that she received notice

¹ ORS 40.135(1)(q) creates a rebuttable presumption that a letter duly directed and mailed was received in the regular course of the mail.

of this hearing, which was mailed to her July 27, 2023, and therefore concluded that she did not have good cause for missing the August 10, 2023 hearing. Order No. 24-UI-253488 at 5. The record does not support this conclusion.

Claimant testified that she was “hyper-focused” on checking for correspondence from the Department regarding her request to reopen the December 22, 2022 hearing after having missed that hearing. Audio Record at 16:55. She further testified that despite expecting correspondence, “I did not receive a notice of hearing.” Audio Record at 17:00. Claimant’s first-hand testimony that she did not receive notice of the August 10, 2023 hearing in the mail is sufficient to rebut the statutory presumption that it was received. Therefore, claimant’s lack of notice that the hearing was being held was the result of a factor beyond her reasonable control. Accordingly, claimant has shown good cause to reopen the August 10, 2023 hearing.

December 22, 2022 hearing. The order under review denied claimant’s request to reopen the August 10, 2023, the purpose of which was to determine whether claimant had good cause to reopen the December 22, 2022 hearing. Order No. 24-UI-253488 at 5-6. As EAB’s decision reverses the order under review and allows claimant’s request to reopen the August 10, 2023 hearing, she is entitled to a determination on her request to reopen the December 22, 2022 hearing. Because the record contains sufficient information to determine whether claimant’s request to reopen the December 22, 2022 hearing should be allowed, in the interest of judicial economy this decision also addresses claimant’s request to reopen the December 22, 2022 hearing.

Claimant testified that she failed to appear at the December 22, 2022 hearing because she did not receive notice of the hearing in the mail until after the hearing date, “maybe a day or two before Christmas.” Audio Record at 14:10. Claimant testified that she was not expecting correspondence from the Department in December 2022 after prevailing at the January 18, 2022 hearing and being allowed benefits eleven months previously. Audio Record at 17:49. Nevertheless, claimant testified that she checked the mail “every couple of days” at that time and that she had not left home for extended periods from the time the notice of hearing was mailed until she received it on December 23 or 24, 2022. Audio Record at 18:30. Therefore, it can reasonably be inferred that the delay in claimant receiving this notice of hearing until after the hearing date was caused by a factor beyond her reasonable control. Accordingly, claimant has shown good cause to reopen the December 22, 2022 hearing.

Because the purpose of the December 22, 2022 hearing was to determine whether the employer’s request to reopen the January 18, 2022 hearing should be allowed, this matter is remanded for a reopened hearing at which claimant may offer testimony or other evidence in rebuttal of the employer’s request to reopen. If the employer’s request to reopen the January 18, 2022 hearing is allowed, claimant will also have the opportunity to offer additional evidence regarding the merits of the work separation.

DECISION: Order No. 24-UI-253488 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: July 2, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-253488 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.

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