

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0464

Reversed
Request to Reopen April 4, 2024, Hearing Allowed
Hearing on Request to Reopen October 25, 2023, Hearing Required

Revocada
La Aplicación Para Reabrir la Audiencia del 4 de Abril de 2024 Es Permitida
Se Requiere Audiencia sobre la Aplicación Para Reabrir la Audiencia del 25 de octubre de 2023

Este documento incluye información importante que no ha sido traducido al español. Llame a la Junta de Apelaciones de Empleo (EAB) al 503-278-2077 para obtener servicios de traducción gratuitos.¹

PROCEDURAL HISTORY: On September 28, 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 July 16, 2023 (decision # 72613). Claimant filed a timely request for hearing. On October 11, 2023, notice was mailed that a hearing had been scheduled for October 25, 2023. On October 25, 2023, claimant failed to appear for the hearing and ALJ Messecar issued Order No. 23-UI-239519, dismissing claimant's request for hearing due to her failure to appear. On November 13, 2023, claimant filed a timely request to reopen the October 25, 2023, hearing. On March 20, 2024, notice was mailed that a hearing had been scheduled for April 4, 2024. Claimant failed to appear at that hearing, and on April 5, 2024, ALJ Chiller issued Order No. 24-UI-251643, denying claimant's request to reopen the October 25, 2023, hearing due to her failure to appear. On April 10, 2024, claimant filed a timely request to reopen the April 4, 2024, hearing. On April 26, 2024, ALJ Mellor conducted a hearing, interpreted in Spanish, at which the employer failed to appear, and on May 6, 2024, issued Order No. 24-UI-253541, denying claimant's request to reopen the April 4, 2024, hearing and leaving Order No. 24-UI-251643 undisturbed. On May 28, 2024, claimant filed an application for review of Order No. 24-UI-253541 with the Employment Appeals Board (EAB).

¹ This document includes important information that has not been translated into Spanish. Please call the Employment Appeals Board (EAB) at 503-278-2077 to obtain free translation services.

HISTORIA PROCESAL: *El 28 de septiembre de 2023, el Departamento de Empleo de Oregon (el Departamento) mandó por correo una decisión administrativa que concluía que la reclamante fue despedida por mala conducta y, por lo tanto, estaba descalificada para recibir los beneficios del seguro de desempleo a partir del 16 de julio de 2023 (decisión # 72613). La reclamante presentó una solicitud de audiencia a tiempo. El 11 de octubre de 2023, se envió por correo un aviso de que se había programado una audiencia para el 25 de octubre de 2023. El 25 de octubre de 2023, la reclamante no se presentó a la audiencia y la jueza administrativa Messecar emitió la Orden No. 23-UI-239519, desestimando la solicitud de audiencia de la reclamante debido a su falta de asistir a la audiencia. El 13 de noviembre de 2023, la reclamante presentó una aplicación oportuna para reabrir la audiencia del 25 de octubre de 2023. El 20 de marzo de 2024, se envió por correo un aviso de que se había programado una audiencia para el 4 de abril de 2024. La reclamante no se presentó a la audiencia y, el 5 de abril de 2024, la jueza administrativa Chiller emitió la Orden No. 24-UI-251643, denegando la aplicación de la reclamante de reabrir la audiencia del 25 de octubre de 2023 debido a su falta de asistir a la audiencia. El 10 de abril de 2024, la reclamante presentó una aplicación oportuna para reabrir la audiencia del 4 de abril de 2024. El 26 de abril de 2024, el juez administrativo Mellor llevó a cabo una audiencia, interpretada al español, en la que el empleador no se presentó. El 6 de mayo de 2024, el juez administrativo emitió la Orden No. 24-UI-253541, denegando la aplicación de la reclamante de reabrir la audiencia del 4 de abril de 2024 y dejando sin cambios la Orden No. 24-UI-251643. El 28 de mayo de 2024, la reclamante presentó una solicitud de revisión de la Orden No. 24-UI-253541 ante la Junta de Apelaciones Laborales (EAB).*

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence includes claimant's requests to reopen the October 25, 2023, and April 4, 2024, hearings with English translations and have been marked as EAB Exhibits 1 and 2, and a copy provided to the parties with this decision. Any party that objects to our admitting EAB Exhibits 1 and 2 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 exhibits will remain in the record.

ASUNTO DE EVIDENCIA: *EAB ha considerado evidencia adicional al llegar a esta decisión bajo OAR 471-041-0090(1) (13 de mayo de 2019). Las pruebas adicionales incluyen las aplicaciones de la reclamante para reabrir las audiencias del 25 de octubre de 2023 y del 4 de abril de 2024 con traducciones al inglés y han sido marcadas como Anexos (Exhibits) 1 y 2 de EAB, y se ha proporcionado una copia a las partes con esta decisión. Cualquier parte que se oponga a que admitamos los Anexos 1 y 2 de EAB debe presentar dicha objeción a esta oficina por escrito, exponiendo la base de la objeción por escrito, dentro de los diez días después a nuestro envío de esta decisión. OAR 471-041-0090(2). A menos que se reciba y se sostenga dicha objeción, las pruebas permanecerán en el expediente.*

FINDINGS OF FACT: (1) On November 13, 2023, claimant filed a request to reopen the October 25, 2023, hearing.

(2) On February 1, 2024, claimant moved from her address on file with the Office of Administrative Hearings (OAH). Claimant filed a change of address with the U.S. Postal Service but did not update her address with the Department or OAH because she was not claiming benefits at the time and did not think

that her request to reopen the October 25, 2023, hearing was still pending after not receiving any correspondence about it for more than two months after it was filed.

(3) On March 20, 2024, notice was mailed to claimant's previous address that a hearing was scheduled for April 4, 2024. Claimant did not receive this notice until after April 4, 2024, when the occupant of that address forwarded the notice to claimant along with Order No. 24-UI-251643. Claimant did not attend the hearing because she was unaware it was being held. On April 10, 2024, claimant filed a request to reopen the April 4, 2024, hearing.

CONCLUSIONS AND REASONS: Claimant's request to reopen the April 4, 2024, hearing is allowed. The matter is remanded for a hearing to determine whether claimant's request to reopen the October 25, 2023, hearing should be allowed and, if so, the merits of decision # 72613.

CONCLUSIONES Y RAZONES: *Se permite la aplicación de la reclamante de reabrir la audiencia del 4 de abril de 2024. El asunto se remite a OAH para una audiencia para determinar si se debe permitir la aplicación de la reclamante de reabrir la audiencia del 25 de octubre de 2023 y, de ser así, los méritos de la decisión # 72613.*

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's request to reopen the April 4, 2024, hearing was filed within 20 days of the date Order No. 24-UI-251643 was issued, and contained a statement explaining why claimant missed the hearing. Therefore, the request met the threshold requirements for consideration.

Claimant missed the April 4, 2024, hearing because the hearing notice was mailed to a previous address and claimant did not receive it until after the hearing. The order under review concluded that claimant's failure to receive the notice was not the result of a factor outside of her reasonable control or an excusable mistake, and did not constitute good cause because she moved without updating her address with OAH. Order No. 24-UI-251643 at 3. The record does not support this conclusion.

Under OAR 471-040-0040(2)(b)(A), good cause for missing a hearing does not include "[f]ailure to receive a document due to not notifying the Employment Department or Office of Administrative Hearings of an updated address while the person is claiming benefits or if the person knows, or reasonably should know, of a pending appeal[.]" Claimant testified that she failed to receive notice of the April 4, 2024 hearing because it was mailed to an address from which she had moved on February 1, 2024. Transcript at 4-5. Claimant admitted that she had not updated her address with the Department or OAH immediately after this move, and did not update it until April 10, 2024. Transcript at 5. However, claimant testified that she had not claimed unemployment insurance benefits since 2023, and was unaware that her appeal of decision # 72613 was still pending at the time of the move. Transcript at 7-9.

Given the length of time that passed between claimant's November 13, 2023, request to reopen and her February 1, 2024, move without acknowledgement of the request from OAH, claimant's failure to know that her request was still pending at the time of the move was not unreasonable. OAR 471-040-0040(2)(b)(A) therefore does not preclude a finding of good cause, and the good cause analysis in OAR 471-040-0040(2) applies.

Claimant's mistake in not knowing that her request to reopen the October 25, 2023, hearing was still pending in February 2024, and that she should therefore have updated her address with OAH rather than just the U.S. Postal Service, was excusable. OAH's delay in acknowledging or scheduling a hearing on the request led claimant to believe that the request had been denied and her appeal of decision # 72613 had concluded prior to the move. As this belief was not unreasonable under the circumstances, claimant's mistake was excusable. Accordingly, claimant has shown good cause to reopen the April 4, 2024, hearing.

Because the issues to be decided at the April 4, 2024, hearing were whether claimant's request to reopen the October 25, 2023, hearing should be allowed and, if so, the merits of decision # 72613, the matter is remanded for a hearing on those issues.

DECISION: Order No. 24-UI-253541 is set aside, and this matter remanded for further proceedings consistent with this order. *La Orden de la Audiencia 24-UI-253541 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: July 8, 2024

FECHA de Servicio: 8 de julio de 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-253541 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-253541, 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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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

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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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