

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0522

Reversed
Late Request to Reopen Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On November 30, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and therefore was disqualified from receiving unemployment insurance benefits effective June 21, 2020 (decision # 73911). Claimant filed a timely request for hearing. On January 6, 2022, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for January 21, 2022. On January 21, 2022, claimant failed to appear at the hearing, and on January 24, 2022, ALJ McGorin issued Order No. 22-UI-184614, dismissing claimant's request for hearing due to his failure to appear. On February 14, 2022, Order No. 22-UI-184614 became final without claimant having filed a request to reopen the hearing. On August 26, 2022,¹ claimant filed a late request to reopen the hearing. ALJ Scott considered claimant's request, and on February 12, 2024, issued Order No. 24-UI-247877, denying the reopen request as late without good cause and leaving Order No. 22-UI-184614 undisturbed. On March 4, 2024, claimant filed an application for review of Order No. 24-UI-247877 with EAB.

On April 12, 2024, EAB issued EAB Decision 2024-EAB-0234, setting aside Order No. 24-UI-247877 and remanding the matter for a hearing to determine whether claimant's late request to reopen the January 21, 2022, hearing should be allowed and, if so, the merits of decision # 73911. On June 3, 2024, ALJ Enyinnaya conducted a hearing at which the employer failed to appear, and on June 11, 2024, issued Order No. 24-UI-256207, denying claimant's late request to reopen and leaving Order No. 22-UI-184614 undisturbed. On July 1, 2024, claimant filed an application for review of Order No. 24-UI-256207 with EAB.

¹ As explained in greater detail below, OAH considered the filing date of the request to be July 31, 2023.

EVIDENTIARY MATTER: Claimant's December 15, 2020, request for hearing on decision # 73911 and the envelope in which it was mailed totaled four pages. The first page was marked as Exhibit 2, and the other pages were unmarked. Claimant's August 26, 2022, request to reopen the January 21, 2022, hearing and the envelope in which it was mailed totaled six pages. The second and third pages of this filing were also marked as Exhibit 2, and the remaining pages were unmarked. For the sake of clarity, this decision refers to pages one through four of the December 15, 2020, filing as Exhibit 2, and pages one through six of the August 26, 2022, filing as Exhibit 6.

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

FINDINGS OF FACT: (1) On January 6, 2022, notice was mailed to claimant's address of record on file with OAH that a hearing was scheduled on decision # 73911 for January 21, 2022. Claimant was living at the address of record at the time, but did not receive the notice until approximately one week after the hearing.

(2) On January 21, 2022, claimant failed to appear at the hearing because he was unaware that it was taking place.

(3) On January 24, 2022, Order No. 24-UI-184614, dismissing claimant's request for hearing due to his failure to appear, was mailed to claimant's address of record, where he was then living. Claimant did not immediately receive the order and was unaware of his right to request reopening of the hearing or the deadline for doing so.

(4) In July 2022, a Department representative left a voicemail message for claimant stating that mail that had been sent to him dating back to at least December 2021 had been returned as undeliverable and requesting that he call back to remedy this situation.

(5) On August 10, 2022, claimant returned the Department's call. Claimant's mother, acting as claimant's representative, spoke with a representative about the returned mail. The representative also discussed with claimant or his mother an overpayment which resulted from decision # 73911, and explained claimant's options for appealing the overpayment decision and requesting an overpayment recovery waiver. However, claimant's appeal of decision # 73911 and his right to request reopening of the January 21, 2022, hearing was not discussed during the call.²

(6) At some point between August 10, 2022, and August 25, 2022, the Department re-mailed the returned mail items to the address where claimant was living, and claimant received these items.

(7) On August 25, 2022, claimant filed a request to waive recovery of the overpayment and a late request for hearing on the overpayment decision.

(8) On August 26, 2022, claimant filed what was construed by the Department as a late request to reopen the January 21, 2022, hearing, and this filing was forwarded to OAH. OAH did not construe this filing

² EAB has taken notice of these facts which are contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). Any party that objects to our taking notice of this information 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 noticed facts will remain in the record.

as a request to reopen the hearing on decision # 73911 and instead associated it with claimant's appeal of the overpayment decision.

(9) On July 31, 2023, claimant filed a document similar in substance to the August 26, 2022, filing, inquiring about the status of his appeal of decision # 73911. OAH construed this as a late request to reopen the January 21, 2022, hearing.

CONCLUSIONS AND REASONS: Claimant's late request to reopen the January 21, 2022, hearing is allowed, and the matter remanded for a hearing on the merits of decision # 73911.

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 party requesting reopening shall set forth the reason(s) for missing the hearing in a written statement, which OAH shall consider in determining whether good cause exists for failing to appear at the hearing. OAR 471-040-0040(3) (February 10, 2012). 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).

Timeliness of request. The request to reopen the January 21, 2022, hearing was due by February 14, 2022. On August 26, 2022, claimant sent a letter to the Department that stated, "I have not received a response to my request for correction of my employment file. I did not refuse to return to work," and referenced decision # 73911. Exhibit 6 at 1. The letter further stated, "First request: December 20, 2020" and "Second request: April 10, 2021[.]" Exhibit 6 at 1. The Department's records show that a representative reviewed this letter, and on September 8, 2022, noted, "Received reopen request and forwarded information to OAH – OAH case # 2021-UI-20648[.]"³ Though OAH did not construe this filing as a request to reopen the January 21, 2022, hearing, the Department was correct in construing it as such a request, for reasons explained below. Because claimant filed his request to reopen the January 21, 2022, hearing on August 26, 2022, the request was late. However, claimant has shown good cause to extend the filing deadline.

The statements made in claimant's August 26, 2022, letter, particularly that he had "not received a response" to his request for hearing, suggest that claimant was unaware that his request for hearing had been dismissed in January 2022 due to his failure to appear at the January 21, 2022, hearing. It also

³ EAB has taken notice of this fact which is contained in Employment Department records. OAR 471-041-0090(1). Any party that objects to our taking notice of this information 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 noticed fact will remain in the record. This case number had been assigned by OAH to claimant's appeal of decision # 73911. Order No. 24-UI-247877 at 1.

suggests that claimant was unaware of his right to request reopening of the hearing or the deadline by which to do so. The letter can therefore be construed as explaining both why claimant missed the hearing and why the request to reopen was not filed within 20 days following dismissal of the request for hearing. Accordingly, the letter met the requirements of OAR 471-040-0040 and OAR 471-040-0041 for consideration as a late request to reopen, and the Department properly construed it as such. Therefore, claimant's request to reopen the January 21, 2022, hearing was filed August 26, 2022.

Claimant testified that he received notice of the January 21, 2022, hearing approximately one week after the hearing. Transcript at 6. However, the record is less clear as to when claimant received Order No. 24-UI-184614, which dismissed his request for hearing, as claimant testified that he could not remember or estimate when it was received. Transcript at 8-9. The record shows that some mail sent to claimant in late 2021 through July 2022 was returned to the Department as undeliverable, which suggests that Order No. 24-UI-184614 was likely one of these returned items. As the order was mailed to the address at which claimant was living at the time, claimant's failure to receive it can reasonably be attributed to a factor beyond his reasonable control. Claimant was aware by late January 2022, from his belated receipt of the hearing notice, that he had missed the hearing. Nonetheless, because he had not received Order No. 24-UI-184614, there is no indication that claimant was aware, as of the February 14, 2022, filing deadline, of his right to request reopening of the hearing or the deadline by which to do so. Therefore, claimant has shown good cause to extend the deadline for timely filing.

The Department re-mailed some or all of the returned items to claimant after the August 10, 2022, telephone call, and the timing of claimant's August 25, 2022, filings with regard to the overpayment decision suggests that claimant received the re-mailed items on or before August 25, 2022. Allowing at least ten days for the Department to have re-mailed these items, and the Postal Service to have then delivered them, it is reasonable to infer that claimant likely received Order No. 24-UI-184614 between August 20, 2022, and August 25, 2022. The factor that prevented timely filing of the request to reopen—claimant's failure to receive Order No. 24-UI-184614 when originally mailed—therefore did not cease until at least August 20, 2022. Because claimant's late request to reopen was filed on August 26, 2022, it was filed within a seven-day "reasonable time" of when the factor that prevented filing ceased. Accordingly, claimant's late request to reopen the January 21, 2022, hearing was filed by the extended deadline and must be analyzed for good cause.

Good cause to reopen. Claimant missed the hearing because he did not receive the notice of hearing until after the hearing had taken place, and was therefore unaware it was being held. The record shows that the hearing notice was mailed to the address at which claimant had been living at the time, and therefore it is unclear what caused the delayed delivery of the notice.⁴ However, given that the notice was properly addressed, it can reasonably be inferred that the delay was caused by a factor beyond claimant's reasonable control. Accordingly, claimant has shown good cause for missing the hearing.

For these reasons, claimant's late request to reopen the January 21, 2022, hearing is allowed, and claimant is entitled to a hearing on the merits of decision # 73911.

⁴ Claimant's request for hearing, filed December 15, 2020, listed the same address as his August 26, 2022 request to reopen. Exhibit 2 at 2; Exhibit 6 at 1. Notice of the January 21, 2022 hearing was also sent to this address. Exhibit 3 at 5. It is reasonable to infer from this evidence that claimant resided at the address to which the notice was mailed.

DECISION: Order No. 24-UI-247877 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 30, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-247877 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

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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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