

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0559

Reversed
Request for Hearing Allowed
Merits Hearing Required

PROCEDURAL HISTORY AND FINDINGS OF FACT: On June 25, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and therefore was disqualified from receiving unemployment insurance benefits effective March 3, 2024 (decision # L0004774730). The employer filed a timely request for hearing. On July 8, 2024, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for July 22, 2024. On July 22, 2024, ALJ Enyinnaya convened a hearing at which the employer failed to appear. No testimony was taken at the hearing. On July 23, 2024, ALJ S. Lee issued Order No. 24-UI-259941, dismissing the employer's request for hearing as non-justiciable because decision # L0004774730 was not adverse to the employer, and leaving decision # L0004774730 undisturbed. On July 25, 2024, the employer filed an application for review with the Employment Appeals Board (EAB) in which they requested to reopen the July 22, 2024, hearing.

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of the employer's July 25, 2024, application for review and an enclosed written statement. This evidence has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 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 exhibit will remain in the record.

WRITTEN ARGUMENT: In addition to the written statement enclosed with the application for review, the employer submitted a separate written argument on July 29, 2024. The employer's argument contained information pertinent only to the merits of decision # L0004774730, and therefore not relevant and material to EAB's determination of the procedural matters addressed in this decision. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), and with the exception of the contents of EAB Exhibit 1, above, EAB considered only information currently in the record when reaching this decision.

The parties may offer new information, such as the information contained in the employer's July 29, 2024, written argument, into evidence at the remand hearing. At that time, it will be determined if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing regarding documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties in advance of the hearing at their addresses as shown on the certificate of mailing for the notice of hearing.

CONCLUSIONS AND REASONS: The employer's request to reopen the hearing is moot. However, the employer's request for hearing was improperly dismissed, and the parties are entitled to a hearing on the merits of decision # L0004774730.

Request to reopen the hearing. 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).

OAR 471-040-0040(6) states, "The OAH will treat as a request to reopen the hearing any application for review that a party files with the Employment Appeals Board or the Employment Department, where the filing party failed to appear at the hearing that led to the decision on appeal, unless the applicant specifically states in the application that the applicant does not wish to have the case reopened. In the event that the OAH subsequently denies the request to reopen the hearing, it shall return the case to the Employment Appeals Board, which will then proceed to review the merits of the substantive decision. The original application for review shall serve as the basis for the Employment Appeals Board's review of the merits of that decision."

OAR 471-041-0060 (May 13, 2019) states, in relevant part:

* * *

(4) Except as otherwise stated in this rule, EAB will treat an application for review by a claimant or employer that failed to appear at a hearing as a request to reopen the hearing under ORS 657.270.

(5) An application for review filed by a claimant or employer that failed to appear at the hearing and whose request for hearing was not dismissed for failure to appear will be treated as an application for review if:

(a) The applicant expresses in the application for review that they are not requesting to reopen the hearing, or

(b) The application for review does not include a written statement that sets forth the reason(s) for missing the hearing as required under OAR 471-040-0040(3).

On July 22, 2024, the employer failed to appear at the hearing scheduled that day. On July 23, 2024, ALJ S. Lee issued the order under review, dismissing the employer's request for hearing. However, the order under review dismissed the request for hearing on the basis of non-justiciability, rather than due to the employer's failure to appear at the hearing. On July 25, 2024, the employer filed an application for review form with EAB. Enclosed therewith was a statement in which the employer explained why they failed to appear at the hearing and requested "another hearing." EAB Exhibit 1 at 2.

Based on the foregoing facts, the employer's application for review meets the requirements, under OAR 471-040-0040(6) and OAR 471-041-0060, to be considered a request to reopen the hearing. Considering the application for review to be a request to reopen the hearing, however, would serve no practical effect, and would be a poor use of administrative resources. Were EAB to return the request to reopen the hearing to OAH, the ALJ would conduct a hearing on whether to allow the employer's request to reopen the hearing and, if so, then proceed to the merits of decision # L0004774730. If the ALJ subsequently denied the employer's reopen request, OAH would, under OAR 471-040-0040(6), return the matter to EAB, who would then proceed to the merits of the "substantive decision"—here, the order under review's dismissal of the employer's request for hearing.

As explained in the following section, EAB has determined that the dismissal of the employer's request for hearing was improper. Were the procedure above followed, then, either the employer's request to reopen the hearing would be denied, this matter would return to EAB, and EAB would allow the employer's request for hearing for the reasons outlined below, to be remanded for a hearing on the merits of decision # L0004774730; or else the employer's request to reopen the hearing would be allowed, which would result in the ALJ proceeding to a hearing on the merits of decision # L0004774730. Because of this practical inevitability, the employer's request to reopen the hearing is essentially moot. As such, EAB declines to rule on whether the employer's request to reopen the hearing should be allowed.

Dismissal of the employer's request for hearing. OAR 471-040-0035 (August 1, 2004) states, in relevant part:

* * *

- (3) On the administrative law judge's own initiative, an administrative law judge may order that a request for hearing be dismissed if:
 - (a) The appellant fails to file the request for hearing within the time allowed by statute or rule;
 - (b) The appellant employer, under ORS 657.485, fails to set forth with the request for hearing the reason therefor;
 - (c) The appellant fails to appear at the hearing at the time and place stated in the notice of hearing;
 - (d) The request for hearing has been filed prior to the service of the decision or determination that is the subject of the request;

(e) The request for hearing is made by a person not entitled to a hearing on the merits or is made with respect to a determination or decision of the Director or authorized representative with respect to which there is no lawful authority to request a hearing.

The order under review dismissed the employer's request for hearing as non-justiciable, concluding, "The decision of the Employment Department is not adverse to the employer. A hearing would not have any practical effect on employer's rights or interests because the administrative decision ruled in employer's favor. *See Barcik v. Kubiaczyk*, 321 Or. 174 (1995); *Brumnett v. PSRB*, 315 Or. 402 (1992)." Order No. 24-UI-259941 at 2. This was in error.

The provisions of OAR 471-040-0035(3) permit an ALJ to dismiss a request for hearing for one of five enumerated reasons. Of those, only the third (the appellant fails to appear at the hearing at the time and place stated in the notice of hearing) is applicable to the facts in this matter. However, the order under review did not dismiss the hearing request on that basis, and such a dismissal is therefore not before EAB on review. Instead, the order under review dismissed the request for hearing under OAR 471-040-0035(3)(e), suggesting that the employer was "not entitled to a hearing on the merits" or "with respect to a determination... to which there is no lawful authority to request a hearing." These provisions are inapplicable to the facts in this matter. As the "employing unit... most directly involved with the facts and circumstances relating to the disqualification" in decision # L0004774730, the employer was entitled to written notice of the administrative decision, and, by extension, was permitted to file a request for hearing on the decision. *See* ORS 657.267(2); ORS 657.269(1)(a). The employer has an interest in ensuring that the work separation is correctly characterized. Thus, dismissing the employer's request for hearing under OAR 471-040-0035(3)(e) was improper.

For the above reasons, the order under review improperly dismissed the employer's request for hearing. Because the employer's request for hearing was otherwise filed in accordance with the applicable rules¹, and because a justiciable controversy remains, the employer's request is allowed, and the parties are entitled to a hearing on the merits of decision # L0004774730.

DECISION: Order No. 24-UI-259941 is set aside, as outlined above.

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

DATE of Service: August 9, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-259941 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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¹ *See generally* OAR 471-040-0005 (July 15, 2018).

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 دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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