

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0617

Affirmed
Request to Reopen Denied

PROCEDURAL HISTORY: On May 17, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not able to work and was denied benefits for the week or weeks she was not able to work and until that reason for the denial had ended (decision # L0004163944).¹ Claimant filed a timely request for hearing. On June 20, 2024, the Office of Administrative Hearings (OAH) served notice of a hearing on decision # L0004163944 scheduled for June 27, 2024. On June 27, 2024, claimant failed to appear for the hearing and ALJ Fair issued Order No. 24-UI-257635, dismissing the hearing request due to claimant's failure to appear, leaving decision # L0004163944 undisturbed. On July 9, 2024, claimant filed a timely request to reopen the hearing. On August 8, 2024, ALJ Chiller conducted a hearing, and on August 16, 2024, issued Order No. 24-UI-262818, denying claimant's request to reopen and leaving Order No. 24-UI-257635 undisturbed. On August 20, 2024, claimant filed an application for review of Order No. 24-UI-262818 with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On April 18, 2024, claimant filed an initial claim for unemployment insurance benefits.² On May 17, 2024, the Department issued decision # L0004163944 concluding that claimant was not able to work and therefore was ineligible to receive benefits. *See* Exhibit 5.

¹ Decision # L0004163944 stated that claimant was denied benefits for the benefit year of her claim, the weeks of April 14, 2024, through April 12, 2025 (weeks 16-24 through 15-25). However, under ORS 657.155(1), an individual's eligibility for benefits based on their ability to work is assessed on a week-by-week basis. As such, it is presumed that the Department intended to deny claimant from benefits for only the week or weeks claimant was not able to work and until that reason for the denial ended.

² EAB has taken notice of this fact, which is 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 fact will remain in the record.

(2) Decision # L0004163944 stated, in the same paragraph that contained the deadline and other information about claimant's right to request an appeal, "If there are other decisions affecting your eligibility for benefits, you must appeal those decisions separately." Exhibit 5 at 2.

(3) On May 24, 2024, the Department issued an administrative decision concluding that claimant had voluntarily left work without good cause and was disqualified from receiving benefits based on the work separation. *See* Exhibit 6. Claimant requested a hearing on that administrative decision. On June 3, 2024, OAH mailed a notice of hearing on that matter scheduled for June 14, 2024. The notice stated that the issue to be decided at the hearing was whether claimant shall be disqualified from receiving benefits because of her work separation. Exhibit 8 at 1.

(4) On June 14, 2024, the hearing was held in the work separation matter. Claimant appeared and testified.

(5) On June 20, 2024, OAH mailed a notice of hearing to claimant scheduling a hearing on decision # L0004163944 for June 27, 2024. The first paragraph of the notice stated as follows:

[T]he issue(s) to be considered are: **Was claimant employed, registered for work, able to work, available for work, and actively seeking and unable to obtain suitable work? . . . Claimant's work search evidence for all weeks at issue may be required at the hearing. Be prepared with that information.**

Exhibit 3 at 1 (emphasis in original). Immediately below this paragraph, the notice provided two phone numbers for OAH and instructions to call those numbers if claimant had any questions prior to the scheduled hearing. Exhibit 3 at 1.

(6) On June 22, 2024, claimant received the hearing notice that scheduled a hearing on decision # L0004163944 for June 27, 2024. Claimant thought the hearing notice looked "virtually identical" to the notice she had received for the work separation matter that had been adjudicated on June 14, 2024. Audio Record at 13:04. Claimant mistakenly believed the notice she received on June 22, 2024, was a duplicate of the notice she had previously received for the June 14, 2024, hearing that had already occurred.

(7) On June 22, 2024, claimant used the Department's Frances Online system to send a message to the Department. In the message, claimant mentioned that she had received the hearing notice that day, stated that she had previously had a hearing on June 14, 2024, and asked the Department to "Please rectify this duplication." Exhibit 1 at 3. The Department did not immediately respond to claimant's message. Although phone numbers and instructions for calling OAH were provided on the notice, claimant did not contact OAH to ask for assistance or clarification. After sending the message, claimant did not make further attempts to contact the Department about the June 27, 2024, hearing, or attempt to contact OAH for assistance or clarification of the hearing notice.

(8) On June 27, 2024, the morning of the hearing on decision # L0004222468, claimant continued to mistakenly believe that the notice she received on June 22, 2024, was a duplicate of the notice she had previously received for the June 14, 2024, hearing that had already occurred. Nothing prevented

claimant from calling in to the June 27, 2024, hearing, but claimant did not do so because of her mistaken belief that the hearing notice was erroneous, and therefore failed to appear for the hearing.

(9) On June 27, 2024, ALJ Fair issued Order No. 24-UI-257635, dismissing the hearing request due to claimant's failure to appear, and leaving decision # L0004163944 undisturbed.

(10) On July 6, 2024, a Department representative replied to claimant's June 22, 2024, Frances Online message. *See* Exhibit 1 at 2-3. The representative stated that inquiries are addressed in the order received and that claimant's message had come to the representative that day. The representative directed claimant to contact OAH directly with questions about hearings, and provided OAH's contact phone number, email, and fax number.

(11) On July 9, 2024, claimant spoke with an OAH representative. The representative explained that the issue addressed at the June 14, 2024, hearing and the issue that was to have been considered at the June 27, 2024, hearing were different, and the notice claimant received on June 22, 2024, was not a duplicate of the notice she had previously received for the June 14, 2024, hearing.

(12) On July 9, 2024, claimant filed a request to reopen the June 27, 2024, hearing.

CONCLUSIONS AND REASONS: Claimant's request to reopen is denied. Order No. 24-UI-262818 is affirmed. Order No. 24-UI-257635 and decision # L0004163944 remain undisturbed.

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. 24-UI-257635 was issued on June 27, 2024, and 20 days from that date was July 17, 2024. Therefore, the deadline for claimant to file a timely request to reopen the June 27, 2024, hearing was July 17, 2024. Claimant filed her request to reopen on July 9, 2024. Accordingly, claimant's request to reopen was timely.

However, claimant failed to establish good cause for her failure to appear at the June 27, 2024, hearing. The record shows that claimant mistakenly believed that the notice she received on June 22, 2024, scheduling a hearing on decision # L0004163944 for June 27, 2024, hearing was a duplicate of the notice she had previously received for the June 14, 2024, hearing on her work separation that had already occurred. Based on this mistaken belief, claimant missed the June 27, 2024, hearing because she thought it was a duplicate or clerical error and chose not to appear for it.

Claimant's failure to appear at the June 27, 2024, hearing did not arise from factors beyond her reasonable control. It was within claimant's reasonable control to carefully read the notice she received on June 22, 2024, and note that it stated that the issues to be considered were whether she was

“employed, registered for work, able to work, available for work, and actively seeking and unable to obtain suitable work,” issues that are distinct from the work separation issue adjudicated on June 14, 2024. Exhibit 3 at 1. To the extent the notice claimant received on June 22, 2024, confused her, it was also within claimant’s control to use the phone numbers printed on the notice to call OAH to request clarification or assistance.

Claimant’s failure to appear at the June 27, 2024, hearing also did not arise from an excusable mistake. Although claimant’s mistaken belief about the hearing notice caused claimant not to appear at the June 27, 2024, hearing, this was not an “excusable mistake” within the meaning of the administrative rules. Specifically, claimant’s error in missing the hearing because she believed that the notice she received on June 22, 2024, was a duplicate of the notice she had previously received for the hearing that occurred on June 14, 2024, was not the result of a due process violation, inadequate notice, or reasonable reliance on another. The respective notices of hearing each put claimant on notice of the distinct issues to be considered, the date and time of the hearings, were issued sufficiently in advance of their respective hearing dates, and did not contain inaccurate information upon which claimant might have reasonably relied to her detriment.

It is possible to establish an excusable mistake in a scenario where a person is unable to follow directions despite substantial efforts to comply. Nevertheless, the efforts claimant made upon receiving the hearing notice on June 22, 2024, were not significant enough to constitute substantial efforts to comply. The only action claimant took was to use Frances Online to send a message to the Department asking them to “rectify this duplication.” Exhibit 1 at 3. OAH is an entity independent of the Department, that is tasked with conducting hearings in unemployment insurance matters. Although phone numbers and instructions for calling OAH were provided on the notice claimant received on June 22, 2024, claimant did not contact OAH to ask for assistance or clarification regarding the June 27, 2024, hearing. Nor did claimant attempt to contact OAH for assistance or make a follow-up contact with the Department from June 23, 2024, through June 26, 2024. Making such efforts during that period was warranted, because the Thursday, June 27, 2024, hearing date was drawing near without claimant having received a response to her Frances Online message, and her speculation that the upcoming hearing could be a duplicate for which she did not need to appear remained unconfirmed. Finally, in the morning of June 27, 2024, nothing prevented claimant from calling in to the hearing, which would have been the reasonable course of action given the lack of response to her message seeking confirmation that she did not need to appear.

To show an excusable mistake based on inability to follow directions despite substantial efforts to comply, greater efforts need be made than those shown by the record in this case. Given that claimant simply sent a Frances Online message to the Department, did not contact OAH despite being provided their contact information, did not follow-up with OAH or the Department regarding her Frances Online message when it became apparent she would not likely receive a response by the hearing date, and did not call in to the hearing to check whether it actually was a duplicate, claimant failed to show that her efforts to comply with the directions in the hearing notice were substantial. Therefore, claimant has not shown that she missed the hearing because she was unable to follow directions despite substantial efforts to comply. She therefore failed to establish that she missed the hearing due to an excusable mistake.

For these reasons, claimant failed to establish good cause for her failure to appear at the June 27, 2024, hearing. Claimant’s request to reopen the June 27, 2024, hearing is denied.

DECISION: Order No. 24-UI-262818 is affirmed.

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

DATE of Service: September 6, 2024

NOTE: You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at courts.oregon.gov. Once on the website, use the ‘search’ function to search for ‘petition for judicial review employment appeals board’. A link to the forms and information will be among the search results.

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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 ໄດ້ ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
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