

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0733

Affirmed
Request to Reopen Denied

PROCEDURAL HISTORY: On June 27, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not actively seeking work during the week of June 16, 2024, through June 22, 2024 (week 25-24) and was therefore ineligible to receive unemployment insurance benefits for that week (decision # L0004833704). On July 2, 2024, the Department served notice of an administrative decision concluding that claimant was not actively seeking work during the weeks of May 5, 2024 through May 18, 2024 (weeks 19-24 through 20-24) and was therefore ineligible to receive benefits for those weeks, and that claimant received benefits to which they were not entitled, and assessing an overpayment of \$636 in unemployment insurance benefits that claimant was required to repay to the Department (decision # L0004865871). Also on July 2, 2024, the Department served notice of an administrative decision concluding that claimant was not actively seeking work during the weeks of June 2, 2024 through June 15, 2024 (weeks 23-24 through 24-24) and was therefore ineligible to receive benefits for those weeks, and that claimant received benefits to which they were not entitled, and assessing an overpayment of \$1,272 in unemployment insurance benefits that claimant was required to repay to the Department (decision # L0004971821). Claimant filed a timely request for hearing on each decision.

On September 10, 2024, notice was mailed to claimant that a consolidated hearing would be held on September 26, 2024. On September 26, 2024, claimant failed to appear for the hearing, and ALJ Enyinnaya issued Orders No. 24-UI-267499, 24-UI-267498, and 24-UI-267501, dismissing claimant's requests for hearing on decisions # L0004833704, L0004865871, and L0004971821, respectively, due to claimant's failure to appear. On October 3, 2024, claimant filed a timely request to reopen the September 26, 2024, hearing. ALJ Kangas considered the request, and on October 10, 2024, issued Orders No. 24-UI-268897, 24-UI-268900, and 24-UI-268899, denying the request to reopen and leaving Orders No. 24-UI-267499, 24-UI-267498, and 24-UI-267501, respectively, undisturbed. On October 15, 2024, claimant filed an application for review of Orders No. 24-UI-268897, 24-UI-268900, and 24-UI-268899 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 24-UI-268897, 24-UI-268900, and 24-UI-268899. For case-tracking purposes, this decision is being issued in triplicate (EAB Decisions 2024-EAB-0732, 2024-EAB-0731, and 2024-EAB-0733).

WRITTEN ARGUMENT: Claimant’s argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant’s reasonable control prevented them from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant’s argument to the extent it was based on the record. Additionally, an application for review and written argument submitted by an employer were not considered because that employer was not a party to these matters.

FINDINGS OF FACT: (1) On September 10, 2024, the Department mailed notice to claimant’s address of record on file with the Office of Administrative Hearings (OAH) that a consolidated telephone hearing would be held on September 26, 2024. Claimant received the notice of hearing prior to the hearing date. The hearing notice stated, “At the time of the hearing, you must call 1-877-622-4041. . . If you requested the hearing and you do not call **1-877-622-4041** at the time set for your hearing, the hearing will be dismissed.” Exhibit 3 at 1 (emphasis in original).

(2) On September 26, 2024, claimant failed to appear at the hearing because they believed that a telephone call would be placed to them, rather than claimant having to call into the hearing.

(3) On October 3, 2024, claimant filed a request to reopen the September 26, 2024, hearing that contained an explanation for why claimant failed to appear at the hearing.

CONCLUSIONS AND REASONS: Claimant’s request to reopen the September 26, 2024, hearing is denied.

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 September 26, 2024, hearing was filed within 20 days of the date the orders dismissing their requests for hearing were issued, and contained an explanation for failing to appear at the hearing. Therefore, claimant’s request to reopen met the threshold requirements for consideration.

Claimant’s explanation for missing the hearing included with the request to reopen was, in its entirety, “I misunderstood, I thought that the hearing person was going to call me.” Exhibit 5 at 2. As the hearing notice instructed that claimant must call at the scheduled time to participate, and that claimant’s requests for hearing would be dismissed if claimant failed to call, claimant has not shown that their failure to call

into the hearing resulted from a circumstance beyond claimant’s reasonable control or an excusable mistake. Although claimant asserted that they failed to appear due to a mistake, it was not an “excusable mistake” within the meaning of the administrative rules because it did not, for example, raise a due process issue, and was not the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply. Accordingly, good cause has not been shown to reopen the hearing, and claimant’s request to reopen is denied.

DECISION: Orders No. 24-UI-268897, 24-UI-268900, and 24-UI-268899 are affirmed.

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

DATE of Service: October 28, 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.

NOTE: **The Department may defer recovery or completely waive the overpaid amount if certain standards are met. If you apply but do not qualify for a waiver, other relief may be available, such as temporarily pausing collection efforts or limiting reductions of current benefits. It is important to apply for a waiver as soon as possible because waivers are not retroactive. For more information on requesting a waiver, go to <https://unemployment.oregon.gov/overpayments> or call 503-947-1995.**

The Overpayment Waiver Application is available for download at <https://unemployment.oregon.gov/uploads/docs/FORM129-EN.pdf> and can be submitted in any of these ways:

- **Frances Online:** Log in to your Frances Online account and use “Send a Message”
- **Use the Contact Us form online at:** unemployment.oregon.gov/contact
- **Email:** UIOverpayments@employ.oregon.gov – Subject: “Waiver Request”
- **Fax:** 503-947-1811 – ATTN: BPC Waiver Requests
- **U.S. Mail:** BPC Overpayment Waivers, PO Box 14130, Salem, OR 97311

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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 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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