

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0766

Affirmed
Request to Reopen Denied

PROCEDURAL HISTORY: On July 29, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving unemployment insurance benefits effective July 7, 2024 (decision # L0005656718).¹ Claimant filed a timely request for hearing. On August 5, 2024, notice was mailed that a hearing had been scheduled for August 22, 2024. Claimant failed to appear for the hearing, and on August 22, 2024, ALJ Buckley issued Order No. 24-UI-263402, dismissing claimant's request for hearing due to his failure to appear. On August 22, 2024, claimant filed a timely request to reopen the hearing. On October 15, 2024, ALJ Frank conducted a hearing at which the employer failed to appear, and on October 23, 2024, issued Order No. 24-UI-270477, denying claimant's request to reopen and leaving Order No. 24-UI-263402 undisturbed. On October 30, 2024, claimant filed an application for review of Order No. 24-UI-270477 with the Employment Appeals Board (EAB).

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 him 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.

FINDINGS OF FACT: (1) On August 5, 2024, notice was mailed to claimant's address of record on file with the Office of Administrative Hearings (OAH) that a telephone hearing had been scheduled for August 22, 2024, at 8:15 a.m. The hearing notice stated, "At the time of the hearing, you must call 1-877-622-4041. Using the telephone keypad, enter the access code **8817873** followed by the '#' key." Exhibit 1 at 1 (emphasis in original).

¹ Decision # L0005656718 stated that claimant was denied benefits from July 7, 2024, to July 5, 2025. However, decision # L0005656718 should have stated that claimant was disqualified from receiving benefits beginning Sunday, July 7, 2024, and until he earned four times his weekly benefit amount. *See* ORS 657.176.

(2) Claimant received the hearing notice prior to the hearing date. Claimant read parts of the notice, but failed to take note of the portion regarding the access code. Claimant copied other pertinent information from the notice including the telephone number to call, the date and time of the hearing, and the numbers in the header of the document labeled “OAH No”; “Referral”; and “SSN/CID”. Exhibit 1 at 1.

(3) On August 22, 2024, at 8:15 a.m., claimant called the telephone number he had copied from the hearing notice, and when prompted for the access code, entered the various numbers he had copied from the header. When these numbers did not work, he went to an adjoining room where he had stored the hearing notice to look for the notice. By the time claimant located the notice and found the access code, the hearing had concluded and claimant therefore called OAH to speak with a representative. Later that morning, claimant filed a request to reopen the hearing by email. The request stated the reason that claimant missed the hearing.

CONCLUSIONS AND REASONS: Claimant’s request to reopen the August 22, 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 hearing was filed the same day the order dismissing his request for hearing was issued, and contained his reason for missing the hearing. Therefore, claimant’s request met the threshold requirements for consideration.

Claimant did not appear for the hearing because he did not enter the access code printed in the hearing notice when he attempted to call into the hearing. Claimant testified that he had stored the notice of hearing in an adjoining room and used information he had copied from the notice to call into the hearing. Audio Record at 17:28. Claimant further testified that he had failed to copy the access code from the notice as he had been “focusing on” the numbers at the top of the notice when copying the information, and unsuccessfully attempted to enter these numbers in the telephone system as the access code. Audio Record at 13:51. By the time claimant found the hearing notice and access code, the hearing had concluded.

Claimant’s failure to note the access code and have it available when calling into the hearing was not a circumstance beyond his reasonable control, as the access code and its importance to participating in the hearing were clearly identified in the hearing notice. Furthermore, while failing to note the access code prior to the hearing was 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, claimant has not shown good cause for failing to appear at the hearing, and his request to reopen the August 22, 2024, hearing is denied.

DECISION: Order No. 24-UI-270477 is affirmed.

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

DATE of Service: November 8, 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 stated above.** See ORS 657.282. For forms and information, visit <https://www.courts.oregon.gov/courts/appellate/forms/Pages/appeal.aspx> and choose the appropriate form under “File a Petition for Judicial Review.” You may also contact the Court of Appeals by phone at (503) 986-5555, by fax at (503) 986-5560, or by mail at 1163 State Street, Salem, Oregon 97301.

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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 الاستئناف 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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