

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0776

Reversed
Request to Reopen Allowed
Remanded

PROCEDURAL HISTORY: On February 23, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged by the employer for misconduct and was disqualified from receiving benefits effective December 31, 2023 (decision # 81741). On March 14, 2024, decision # 81741 became final without claimant having filed a request for hearing. On July 21, 2024, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on July 24, 2024, issued Order No. 24-UI-260056, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by August 7, 2024.

On July 30, 2024, claimant filed a timely response to the appellant questionnaire. On September 9, 2024, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 24-UI-260056 was vacated and that a new hearing would be scheduled to determine whether to allow claimant's late request for hearing and, if so, the merits of decision # 81741. On September 9, 2024, OAH served notice of a hearing scheduled for September 25, 2024, at 9:30 a.m. On September 25, 2024, claimant failed to appear for the hearing, and ALJ Enyinnaya issued Order No. 24-UI-267292, dismissing claimant's hearing request due to claimant's failure to appear.

On October 1, 2024, claimant filed a request to reopen the September 25, 2024, hearing. On October 29, 2024, ALJ Frank conducted a hearing, and on October 31, 2024, issued Order No. 24-UI-271590, denying claimant's request to reopen and leaving Order No. 24-UI-267292 undisturbed. On November 4, 2024, claimant filed an application for review of Order No. 24-UI-271590 with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On September 9, 2024, OAH mailed notice of a hearing scheduled for September 25, 2024, at 9:30 a.m. to determine whether to allow claimant's late request for hearing on decision # 81741 and, if so, the merits of that decision.

(2) Claimant had the day of September 25, 2024, off of work and planned to call in to the hearing from home that day. At 7:00 or 8:00 a.m. on September 25, 2024, claimant's employer called claimant in to work for a shift beginning at 9:00 a.m.

(3) Claimant reported for her shift at 9:00 a.m. When she arrived, claimant's boss told claimant "to get busy." Audio Record at 16:10. Claimant could not take a break to appear at the 9:30 a.m. hearing, because 9:30 a.m. was "too early for [claimant's] break time." Audio Record at 16:26.

(4) Although Claimant had been planning to call in to the hearing at 9:30 a.m. from home, after she arrived at work at 9:00 a.m., the hearing initially "slipped [her] mind." Audio Record at 17:25. As 9:30 a.m. approached, claimant remembered the hearing, but did not have the notice of hearing with her at work to call OAH and request a postponement of the hearing. Claimant asked her mother to "run back to [claimant's] house" to get the hearing notice and bring it to claimant so claimant could contact OAH. Audio Record at 20:13.

(5) At 9:30 a.m. that morning, ALJ Enyinnaya convened the hearing, but claimant did not appear because she could not take a break from work that early. Shortly after 9:30 a.m., claimant's mother came to claimant's workplace and gave claimant the notice of hearing. Claimant attempted to call OAH at about 9:40 a.m. to discuss a postponement or rescheduling of the hearing, but no one picked up.

(6) On September 25, 2024, ALJ Enyinnaya issued Order No. 24-UI-267292, dismissing claimant's hearing request due to claimant's failure to appear. On October 1, 2024, claimant filed a timely request to reopen the September 25, 2024, hearing.

CONCLUSIONS AND REASONS: Claimant's request to reopen the September 25, 2024, hearing is allowed. Order No. 24-UI-271590 is set aside, and this matter is remanded for a hearing on whether to allow claimant's late request for hearing on decision # 81741 and, if so, the merits of that decision.

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).

The order under review concluded that the record contained "evidence of more than one potential explanation for [claimant's] nonappearance, the details of which are inconsistent and contradictory." Order No. 24-UI-271590 at 2. The order concluded that claimant had not provided consistent or reliable evidence of good cause and denied the request to reopen. Order No. 24-UI-271590 at 2. The record does not support this conclusion. For the reasons that follow, claimant's request to reopen is allowed.

The record shows that claimant originally had the day of September 25, 2024, off from work and that she planned to call in to the 9:30 a.m. hearing that day from home. However, at 7:00 or 8:00 a.m. that morning, claimant was unexpectedly called into work for a shift starting at 9:00 a.m. Claimant reported for her shift at 9:00 a.m. and was told by her boss to “to get busy.” Audio Record at 16:10. Claimant could not take a break to appear at the 9:30 a.m. hearing, because 9:30 a.m. was “too early for [claimant’s] break time.” Audio Record at 16:26. At 9:30 a.m. that morning, ALJ Enyinnaya convened the hearing, and claimant did not appear because 9:30 a.m. was too early for her to take a break from work to participate in the hearing.

The order under review’s conclusion that claimant’s testimony was inconsistent or unreliable is without merit. Claimant stated in her request to reopen, which took the form of a hand written note on the fax cover sheet of her application for review of Order No. 24-UI-267292, that, “I shouldn’t [*sic*] come to the hearing cause I was working[.]”¹ Consistent with that explanation, claimant testified at hearing that her “boss called [her] in to work and [she] couldn’t make it”, that the 9:30 a.m. hearing time “was still too early for [her] break time,” and that the reason she didn’t have time to do the hearing at 9:30 a.m. was because she “didn’t have [her] break time.” Audio Record at 14:35, 16:25, 21:30.

Amid questioning by the ALJ that at times was confusing,² claimant testified that after she arrived at work at 9:00 a.m., the hearing initially “slipped [her] mind” but as 9:30 a.m. approached, claimant remembered the hearing and asked her mother to “run back to [claimant’s] house” to get the hearing notice and bring it to claimant so claimant could contact OAH. Audio Record at 17:25, 20:13. This testimony was offered in response to the ALJ’s inquiries about whether and when claimant tried to contact OAH for a postponement. Therefore, this testimony is viewed, not as an explanation for why claimant missed the hearing, but as conveying that claimant asked her mother to retrieve the hearing notice to enable claimant to contact OAH about a postponement or rescheduling, a matter that presumably could be done quickly without the need for taking a break, unlike participating in a hearing with multiple issues like the September 25, 2024, hearing.

The record therefore shows that claimant’s failure to appear at the hearing likely arose from being called into work by surprise on September 25, 2024, and the timing of the hearing being too early during her shift for claimant to take a break from work to participate in the hearing. These were factors beyond claimant’s reasonable control. Claimant therefore had good cause for failing to appear at the September 25, 2024, hearing, and claimant’s request to reopen is allowed. Order No. 24-UI-271590 therefore is reversed, Order No. 24-UI-267292 is cancelled, and this matter is remanded for a hearing on whether claimant’s late request for hearing should be allowed and, if so, the merits of decision # 81741.

On remand, the ALJ should ask questions to develop the record regarding whether claimant had good cause for filing her hearing request late, and if claimant’s late request for hearing was made within a

¹ 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 EAB taking notice of this information must send their objection to EAB in writing, stating why they object, within ten days of EAB mailing this decision. OAR 471-041-0090(2). Unless EAB receives and agrees with the objection, the noticed fact(s) will remain in the record.

² The record suggests that claimant is an individual with a disability. *See* Exhibit 2 at 2 (“I have a disability and did not understand that my message would not work.”) On remand, the ALJ should consider phrasing questions in a manner that minimizes the potential for confusion and asking follow-up questions to promote clarity and resolve possible inconsistencies.

seven-day reasonable time. If the record on remand shows that these requirements were met, the late request for hearing should be allowed and the ALJ should turn to the merits of the case and ask questions to develop the record regarding those issues.

DECISION: Order No. 24-UI-271590 is set aside, and a hearing is required on whether to allow claimant's late request for hearing on decision # 81741, and if so, the merits of that decision.

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

DATE of Service: December 3, 2024

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

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