

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0785-R

Request for Reconsideration Dismissed

PROCEDURAL HISTORY AND FINDINGS OF FACT: On May 9, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was disqualified from receiving benefits effective February 11, 2024 (decision # L0004026962). Claimant filed a timely request for hearing. On July 16, 2024, notice was mailed to the parties that a hearing was scheduled for July 30, 2024. On July 30, 2024, claimant failed to appear at the hearing, and on July 31, 2024, ALJ Rackstraw issued Order No. 24-UI-261035, dismissing claimant's request for hearing due to her failure to appear. On August 7, 2024, claimant filed a timely request to reopen the hearing.

On October 25, 2024, ALJ Chiller conducted a hearing at which the employer failed to appear, and on November 6, 2024, issued Order No. 24-UI-272394, allowing claimant's request to reopen and modifying decision # L0004026962 by concluding that claimant quit work without good cause and was disqualified from receiving benefits effective January 28, 2024. On November 8, 2024, claimant filed an application for review of Order No. 24-UI-272394 with the Employment Appeals Board (EAB). On December 13, 2024, EAB issued EAB Decision 2024-EAB-0785, modifying Order No. 24-UI-272394 by concluding that claimant was discharged, not for misconduct, within 15 days of her planned voluntary leaving without good cause, and was disqualified from receiving benefits effective February 4, 2024. On December 20, 2024, claimant filed a request for reconsideration of EAB Decision 2024-EAB-0785.

CONCLUSIONS AND REASONS: Claimant's request for reconsideration is dismissed.

ORS 657.290(3) authorizes EAB to reconsider any of its previous decisions including "the making of a new decision to the extent necessary and appropriate for the correction of previous error of fact or law." "Any party may request reconsideration to correct an error of material fact or law, or to explain any unexplained inconsistency with Employment Department rule, or officially stated Employment Department position, or prior Employment Department practice." OAR 471-041-0145(1) (May 13, 2019). The request is subject to dismissal unless it includes a statement that a copy was provided to the other parties, and is filed on or before the 20th day after the decision sought to be reconsidered was mailed. OAR 471-041-0145(2).

Claimant's request for reconsideration was filed within 20 days of the date EAB Decision 2024-EAB-0785 was mailed. However, the request did not include a statement that a copy was provided to the employer. Therefore, under OAR 471-041-0145(2), claimant's request for reconsideration is dismissed.

Claimant's request for reconsideration, as well as the written argument she submitted prior to the issuance of EAB Decision 2024-EAB-0785, alleged that the ALJ was biased and that claimant did not receive a fair hearing.¹ Despite the dismissal of the request for reconsideration, and applicable rules precluding EAB's consideration of the merits of the written argument and request for reconsideration, it is appropriate for EAB to address the bias allegations.

Claimant questioned the ALJ's "legal right to act in an official capacity," asserting that the ALJ was "[not] licensed to practice law in the State of Oregon and is the defendant in a tort case in Oregon[.]" Claimant's Request for Reconsideration at 1; Claimant's November 8, 2024, Written Argument at 1. It is unnecessary to consider whether these assertions are accurate because they are irrelevant to an ALJ's qualifications to serve in that role. ORS 183.615(2) sets forth the statutory requirements to serve as an ALJ, and licensure to practice law and lack of involvement in lawsuits are not among those requirements.² Claimant's assertion that the ALJ who conducted the hearing was legally unqualified to do so was therefore without merit.

Claimant also asserted that the proceedings were unfair with respect to the admission of documentary evidence. The record was left open for a period after the hearing to allow claimant to submit additional evidence because she claimed she did not receive the Notice of Hearing that explained the procedure for submitting such evidence. Transcript at 48. Claimant did not submit any additional evidence during this period. Claimant asserted that the ALJ "wouldn't tell me what evidence she had, only that I not submit duplicate information," and that the ALJ "was not interested in my evidence, only that I not send anything she already had which was unknown to me." Claimant's November 8, 2024, Written Argument at 1. The record does not support claimant's assertion that the ALJ failed to inform her of the evidence under consideration. The ALJ identified and, at claimant's request, described the contents of each exhibit admitted to evidence. Audio Record at 8:23 to 13:44; 18:10 to 18:56. Five of the ten exhibits described and admitted had been submitted by claimant.

When discussing leaving the record open for additional evidence, claimant stated, "I don't know what you're looking at. So I was just going to resubmit everything." Transcript at 51. The ALJ replied, "[J]ust to make sure things don't get too muddled[,] I would ask you not to send. . . duplicates of. . . documents I already have. So, for example, the Settlement Agreement, and the check. . . are already received[.]" Transcript at 51-52. The ALJ stated that documents related to events after the work separation occurred would likely not be relevant, but suggested that relevant evidence would include any "communications with [claimant's supervisor]" and "[a]nything else regarding. . . the circumstances leading up to [the] work separation[.]" Transcript at 52.

¹ Claimant's written argument was not considered with respect to EAB's decisions because she did not declare that she provided a copy of her argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019).

² ORS 183.615(2) provides, "Only persons who have a knowledge of administrative law and procedure may be employed by the chief administrative law judge as administrative law judges. The chief administrative law judge by rule may establish additional qualifications for administrative law judges employed for the office." No additional qualifications have been established by rule.

The record therefore shows that claimant was adequately informed of the contents of the admitted exhibits and what additional evidence would likely be considered relevant. The record does not suggest that the ALJ was unwilling to consider relevant evidence offered by either party. Claimant's assertions of bias or unfairness regarding the admission or consideration of evidence are therefore without merit.

With respect to how the hearing was conducted, claimant asserted that it was unfair, in part, because the "ALJ demanded that I tell her if there was an attorney in my presence." Claimant's November 8, 2024, Written Argument at 1. Development of the record necessarily includes identifying each person present or observing the hearing, and ascertaining whether each party is being assisted by a representative at hearing. The line of questioning to which claimant refers began when claimant stated to the ALJ, "I have my attorney right here. My attorney is right here, so what was your name again?" Audio Record at 14:58. The ALJ then asked if claimant had an attorney present for the hearing, to which claimant responded, "No, he's just listening. He's just listening. He's not offering me any information." Audio Record at 15:06. The ALJ then explained that claimant needed to provide the attorney's name for the record, to which claimant laughed and replied, "I am an attorney[.]" Audio Record at 15:28. The ALJ again explained that anyone present for the hearing needed to be identified for the record and asked claimant to identify the attorney that claimant had previously claimed was present, to which claimant responded, "No. He's outside," and when the ALJ asked if he, or anyone else, had ever been present since the start of the hearing, claimant stated, "No. He's outside. . . He's here on the property but he's not present," and denied that anyone other than herself had been present since the start of the hearing. Audio Record at 16:06. Given claimant's persistently contradictory statements regarding whether another person was present with her for the hearing, the ALJ's questioning to ensure the record was accurate in that regard was appropriate and did not show bias.

Further, claimant asserted that the ALJ "acted as a representative of my employer, that didn't show up, as opposed to allowing me to give testimony on behalf of myself." Claimant's November 8, 2024, Written Argument at 1. When the party who did not file a request for hearing fails to appear at hearing, the ALJ does not act as that party's representative, but must impartially develop the record by asking questions of the party who appeared. The questions the ALJ posed to claimant did not reflect a bias for or against either party, but merely served to develop the record regarding the work separation. At the conclusion of the ALJ's questioning, the ALJ asked claimant, "[D]o you have any other testimony about your work separation that you haven't already offered but that you wanted to have on the record?" Transcript at 47. After claimant answered, the ALJ asked, "Anything further[?]" Transcript at 48. The record therefore shows that claimant was given the opportunity to testify on her own behalf without limitation. Therefore, claimant's assertion that the hearing was conducted unfairly is without merit.

EAB reviewed the hearing record in its entirety. As explained herein, it shows that the ALJ inquired fully into the matters at issue and gave all parties reasonable opportunity for a fair hearing as required by ORS 657.270(3) and (4) and OAR 471-040-0025(1) (August 1, 2004).

DECISION: Claimant's request for reconsideration is dismissed. EAB Decision 2024-EAB-0785 remains undisturbed.

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

DATE of Service: January 21, 2025

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 telephone 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

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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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