

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0829

Late Request to Reopen Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On March 22, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged for misconduct and therefore was disqualified from receiving unemployment insurance benefits effective September 24, 2023 (decision # L0003237630). Claimant filed a timely request for hearing.

On April 25, 2024, the Office of Administrative Hearings (OAH) served notice of a hearing on decision # L0003237630 scheduled for May 6, 2024, at 1:30 p.m. On May 6, 2024, claimant did not appear for the hearing, and ALJ Christon issued Order No. 24-UI-253578, dismissing claimant's hearing request on decision # L0003237630 due to claimant's failure to appear. On May 28, 2024, Order No. 24-UI-253578 became final without claimant having filed a timely request to reopen the hearing.

On August 22, 2024, claimant filed a late request to reopen the May 6, 2024, hearing. On October 31, 2024, ALJ Chiller conducted a hearing at which the employer failed to appear, and on November 19, 2024, issued Order No. 24-UI-273839, affirming Order No. 24-UI-253578. On December 5, 2024, claimant filed an application for review of Order No. 24-UI-273839 with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant 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). The argument also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) In April 2024, claimant was diagnosed with a neurological condition resulting from her having previously suffered multiple strokes. The neurological condition caused claimant memory loss, an inability to finish sentences when speaking, and to have difficulty with organization and time management. Claimant found that following her April 2024 diagnosis, "at

different times” she would be more aware of her difficulties with memory loss, time management, and being disorganized. Audio Record at 39:27.

(2) On April 25, 2024, OAH mailed notice to claimant of a hearing on decision # L0003237630 scheduled for May 6, 2024, at 1:30 p.m. Claimant received the hearing notice.

(3) On May 6, 2024, claimant tried to call into the hearing but, due to her neurological condition, had a challenging time connecting to the call, and missed the hearing.

(4) On May 6, 2024, Order No. 24-UI-253578 was mailed to the parties, dismissing claimant’s hearing request on decision # L0003237630 due to her failure to appear at the May 6, 2024, hearing. The order stated:

If you did not appear at the hearing, you may request to reopen the hearing. . . . Your request to reopen the hearing must: 1) be in writing; 2) show good cause for failing to appear at the hearing . . . ; and 3) either be filed within 20 days of when the order from the hearing you missed was mailed, or else show good cause to extend the period to request reopening of your case, and show that you filed your reopen request within seven days of when those factors or circumstances ceased to exist.

Exhibit 2 at 2. Claimant received Order No. 24-UI-253578 after it was mailed but had no specific memory of receiving it in the mail or of reviewing it when she received it.

(5) In May or June 2024, claimant went to a WorkSource office and asked what she could do to fix the situation and receive a hearing. The representative recommended that claimant could file a request to reopen the May 6, 2024, hearing in writing. Claimant did not do so at that time.

(6) On May 28, 2024, Order No. 24-UI-253578 became final without claimant having filed a request to reopen the May 6, 2024, hearing.

(7) On July 1, 2024, claimant called OAH and spoke to a hearings coordinator. The hearings coordinator also told claimant she could file a request to reopen the May 6, 2024, hearing in writing. Claimant did not do so at that time.

(8) On August 22, 2024, claimant filed a late request to reopen the May 6, 2024, hearing.

CONCLUSIONS AND REASONS: Claimant’s request to reopen is allowed. Order No. 24-UI-273839 is set aside and a hearing on the merits of decision # L0003237630 is required.

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. The period within which a party may request reopening may be extended if the party requesting reopening has good cause for not requesting reopening within the time allowed, and acts within a reasonable time. OAR 471-040-0041(1) (February 10, 2012). “Good cause” exists when an action, delay, or failure to act arises from an excusable mistake or from factors beyond an applicant’s reasonable control. OAR 471-040-0041(2). “A reasonable time,”

is seven days after the circumstances that prevented a timely filing ceased to exist. OAR 471-040-0041(3). The party requesting reopening shall set forth the reason(s) for filing a late request to reopen in a written statement, which OAH shall consider in deciding whether good cause exists for the late filing, and whether the party acted within a reasonable time. OAR 471-040-0041(4).

The deadline to file a timely request to reopen the May 6, 2024, hearing was May 28, 2024. Because claimant did not file a request to reopen until August 22, 2024, the request was late. The order under review concluded that good cause for allowing claimant's late request to reopen had not been shown. Order No. 24-UI-273839 at 4. The record does not support this conclusion.

The record shows that claimant had good cause for failing to appear at the May 6, 2024, hearing. Claimant's inability to connect to the hearing telephone call was due to her neurological condition, which was a factor beyond her reasonable control. Claimant suffered from a neurological condition resulting from having had multiple strokes. The condition caused claimant memory loss, an inability to finish sentences when speaking, and to be disorganized and manage time poorly. At the time of the May 6, 2024, hearing, claimant attempted to call into the hearing but due to her neurological condition, had a difficult time connecting and missed the hearing. Thus, claimant had good cause for failing to appear at the hearing.

Although claimant did not file her request to reopen by the May 28, 2024, deadline, good cause has been shown to extend the period within which to request reopening. Claimant continued to suffer from her neurological condition following the May 6, 2024, date of the hearing, the May 28, 2024, deadline, and after that date. Claimant received Order No. 24-UI-253578, and that order contained an advisement about claimant's right to request a reopening of the hearing, along with a reminder that such a request needed to be filed within 20 days of the mailing date of the order. However, claimant had no specific memory of receiving Order No. 24-UI-253578 in the mail or of reviewing or understanding it when she received it. The record therefore supports that claimant was experiencing memory loss and difficulty with organization and time management due to her neurological condition at the time she received Order No. 24-UI-253578. As such, failing to file a request to reopen by the May 28, 2024, deadline arose from factors beyond claimant's reasonable control even though she may have received the order prior to the deadline.

Similarly, a WorkSource representative and an OAH hearings coordinator told claimant, in May or June 2024 and on July 1, 2024, respectively, that claimant could file a request to reopen in writing. Nevertheless, the record supports that the difficulties owing to claimant's neurological condition were ongoing during these interactions. Accordingly, these interactions did not cause claimant's neurological condition to stop and the basis for extending the period within which to request reopening continued beyond July 1, 2024.

On August 22, 2024, claimant filed a late request to reopen. It is not plain from the record how claimant's circumstances changed on that date such that she was capable of filing then. However, the record shows that following being diagnosed with the neurological condition in April 2024, claimant found that "at different times" she would be more aware of her difficulties with memory loss, time management, and being disorganized. Audio Record at 39:27. That claimant's awareness of these difficulties fluctuated supports an inference that the severity of claimant's neurological condition varied and became more stable at times. Therefore, it is reasonable to infer that on August 22, 2024, the

difficulties caused by claimant's neurological condition stopped being of such severity that they precluded filing, and the factor beyond claimant's reasonable control ended. Thus, the period within which to file a request to reopen extended to August 22, 2024. Since claimant filed her request to reopen that day, she filed within a seven-day reasonable time of when the circumstances that prevented a timely filing ceased to exist.

For these reasons, claimant's late request to reopen is allowed, and claimant is entitled to a hearing on the merits of decision # L0003237630.

DECISION: Order No. 24-UI-273839 is set aside, and this matter remanded for further proceedings consistent with this order and claimant's request for accommodation filed with OAH on September 4, 2024, wherein claimant requested that notice of the hearing on the merits of decision # L0003237630 be provided to claimant by email, mail and text message.

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

DATE of Service: January 8, 2025

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-273839 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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

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