

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0850

Affirmed
Late Request to Reopen Denied

PROCEDURAL HISTORY: On March 10, 2021, 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 June 6, 2020 (decision # 103040). On March 30, 2021, decision # 103040 became final without claimant having filed a request for hearing. On April 28, 2021, claimant filed a late request for hearing. ALJ Kangas considered the request, and on June 1, 2021, issued Order No. 21-UI-167802, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by June 15, 2021. On June 15, 2021, claimant filed a timely response to the appellant questionnaire. On September 17, 2021, the Office of Administrative Hearings (OAH) mailed a letter to the parties stating that Order No. 21-UI-167802 was vacated and that a hearing would be scheduled to determine whether to allow claimant's late request for hearing and, if so, the merits of decision # 103040. Also on September 17, 2021, OAH served notice that the hearing was scheduled for October 4, 2021.

On October 4, 2021, claimant failed to appear for the hearing, and ALJ Ramey issued Order No. 21-UI-176259, dismissing claimant's late request for hearing due to their failure to appear. On October 25, 2021, Order No. 21-UI-176259 became final without claimant having filed a request to reopen the hearing. On October 16, 2024, claimant filed a late request to reopen the hearing. ALJ Scott considered the request, and on November 26, 2024, issued Order No. 24-UI-274765, denying the request and leaving Order No. 21-UI-176259 undisturbed. On December 12, 2024, claimant filed a timely application for review of Order No. 24-UI-274765 with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On September 17, 2021, notice was mailed to claimant's address of record that a telephone hearing had been scheduled for October 4, 2021, at 10:45 a.m.

(2) On October 4, 2021, claimant failed to appear at the hearing, and Order No. 21-UI-176259 was mailed to claimant's address of record. Order No. 21-UI-176259's Certificate of Mailing stated, "If you failed to appear for the hearing, you may request that your case be reopened." It also stated, "Any appeal from this Order must be filed on or before October 25, 2021, to be timely."

(3) On October 16, 2024, claimant filed a new request for hearing by telephone that is construed as a late request to reopen the October 4, 2021, hearing.

CONCLUSIONS AND REASONS: Claimant’s late request to reopen 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. The period within which a party may request reopening may be extended if the party requesting reopening has good cause for failing to request 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 determining whether good cause exists for the late filing, and whether the party acted within a reasonable time. OAR 471-040-0041(4).

The request to reopen the October 4, 2021, hearing was due by October 25, 2021. Claimant’s request to reopen was filed on October 16, 2024, and was therefore late. The filing contained a written statement explaining why claimant disagreed with decision # 103040’s conclusions regarding the work separation, but did not explain why claimant failed to file a request to reopen by the October 25, 2021, deadline. *See* Exhibit 5 at 4.¹ The record therefore fails to show that claimant was prevented from timely filing a request to reopen by factors beyond their reasonable control or an excusable mistake. Accordingly, claimant has not shown good cause to extend the filing deadline, and the late request to reopen the October 4, 2021, hearing is denied.

DECISION: Order No. 24-UI-274765 is affirmed.

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

DATE of Service: January 10, 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.

¹ The request to reopen was in the form of a new request for hearing, which claimant filed by telephone. That the Department representative filed it on claimant’s behalf in this manner suggests that neither claimant nor the representative recognized that it would be treated as a request to reopen. This may explain claimant’s failure to set forth their reasons for the late filing and for missing the hearing, as required by rule. However, claimant did not submit evidence in this regard even after Order No. 24-UI-274765 made clear that claimant’s filing was construed as a request to reopen and lacked the required explanations.

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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 desisyong ito.

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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