

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0869

Reversed
Request to Reopen Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On March 15, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was disqualified from receiving unemployment insurance benefits effective July 2, 2023 (decision # L0003032043). Claimant filed a timely request for hearing. On May 1, 2024, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for May 15, 2024, at 9:30 a.m. on decision # L0003032043.

On May 15, 2024, claimant failed to appear for the hearing, and ALJ Christon issued Order No. 24-UI-254285 dismissing the hearing request on decision # L0003032043 due to claimant's failure to appear. On June 3, 2024, claimant filed a timely request to reopen the May 15, 2024, hearing.

On July 8, 2024, ALJ Christon conducted a hearing at which the employer failed to appear, and on July 26, 2024, issued Amended Order No. 24-UI-260459,¹ denying claimant's request to reopen and leaving Order No. 24-UI-254285 undisturbed. On August 12, 2024, claimant filed an application for review 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 her 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 or about July 2, 2023, claimant stopped working for the employer. Shortly thereafter, claimant filed an initial claim for unemployment insurance benefits.

¹ Amended Order No. 24-UI-260459 amended the original order, Order No. 24-UI-258440, issued on July 9, 2024. Order No. 24-UI-258440 inadvertently copied the text of Order No. 24-UI-254285, which necessitated that it be amended by Amended Order No. 24-UI-260459.

(2) On March 15, 2024, the Department issued decision # L0003032043, which concluded that claimant had voluntarily quit work without good cause and was disqualified from receiving benefits. On March 28, 2024, claimant filed a timely request for hearing on decision # L0003032043.

(3) On April 23, 2024, claimant contacted the Department through her Frances Online account asking for an explanation of “what kind of timeline [she] should expect to receive an outcome from the office.” Audio Record at 29:52. A Department representative responded, “Unfortunately I do not have a timeline for your appeal or a hearing date. However, if you need to inquire anything to the appeal, please call the Office of Administrative Hearings.” Audio Record at 29:57.

(4) On May 1, 2024, OAH mailed to claimant’s address of record a notice of a hearing scheduled for May 15, 2024.

(5) Claimant checked her mail regularly. From the May 1, 2024, date the notice of hearing was mailed through Friday, May 10, 2024, the hearing notice had not been delivered to claimant’s address.

(6) Claimant did not check her mail on Saturday, May 11, 2024. The U.S. Postal Service does not deliver mail on Sunday, May 12, 2024.

(7) On Monday, May 13, 2024, claimant traveled to eastern Oregon to help her elderly father replace windows in his home and remove tree debris that had fallen during a recent windstorm. Claimant planned to return home on Monday, May 21, 2024. Claimant did not arrange for anyone to check her mail while she was away. She did not do so because she had experienced slow response times from the Department and so did not expect that OAH would both provide notice and then hold the hearing in the matter during the eight-day period that she was away.

(8) On May 15, 2024, claimant did not appear for the hearing, and ALJ Christon issued Order No. 24-UI-254285 dismissing the hearing request on decision # L0003032043 due to claimant’s failure to appear.

(9) On May 21, 2024, claimant returned home from helping her father. On that date, claimant discovered in her mailbox the notice scheduling the hearing for May 15, 2024, and Order No. 24-UI-254285 dismissing her hearing request for failure to appear.

(10) On June 3, 2024, claimant filed a timely request to reopen the May 15, 2024, hearing.

CONCLUSIONS AND REASONS: Claimant’s request to reopen is allowed. Order No. 24-UI-260459 is reversed, Order No. 24-UI-254285 is cancelled, and a hearing on the merits of the decision # L0003032043 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. “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 deciding whether good cause exists for failing to appear at the hearing. OAR 471-040-0040(3).

The order under review concluded that claimant did not establish good cause to reopen the May 15, 2024, hearing because she failed to show that an excusable mistake or factors beyond her reasonable control prevented her from appearing at the hearing. Order No. 24-UI-260459 at 3. The record does not support the conclusion that claimant lacked good cause for failing to appear at the May 15, 2024, hearing.

The resolution of this case is controlled by case law. In *Bursell v. Employment Division*, 694 P.2d 558, 71 Or. App. 729 (1985), the Department (then known as the Employment Division) issued an administrative decision denying the claimant benefits on November 10, 1983. The claimant requested a hearing on November 14, 1983. On or about November 29, 1983, until December 6, 1983, the claimant was on an out-of-town trip searching for a job. On November 29, 1983, a notice of hearing, which scheduled a hearing for the morning of December 6, 1983, was mailed to the claimant's address of record. The claimant failed to appear for the December 6, 1983, hearing. He failed to do so because he did not receive the notice of hearing until he returned from his trip on the afternoon of December 6. The claimant moved to reopen the hearing he missed, the ALJ (then known as a referee) denied the motion, and EAB affirmed. *Bursell* at 559.

The Oregon Court of Appeals reversed. The Court noted that only seven days had elapsed between the mailing date of the notice of hearing and the date set for the hearing and that the claimant was out of the area during that time period. The Court further noted that the "primary purpose of the expedited hearing process is to assist the unemployed worker" and reasoned that allowing "the expedited timing [to] itself bar even an opportunity for a hearing would produce an incongruous result." From there, the Court stated:

We conclude that, given the exceptionally short time period at issue, it was not unreasonable for claimant to initiate a brief out-of-town job search without anticipating both that a notice of hearing would arrive in his brief absence and that the hearing would be set within the short time before his return. We hold that, as a matter of law, claimant has established good cause for failing to appear at the hearing.

Bursell at 560. While reaching this result, the Court acknowledged that the claimant "could have notified the agency that he would be out of town seeking work for a given period" but attached no significance to the fact the claimant had failed to do so. *Bursell* at 560.

The facts of *Bursell* are substantially similar to the facts presented here. In *Bursell*, the claimant requested a hearing on November 14, left for a brief trip on or about November 29, was mailed a notice of hearing (he did not receive) on November 29 scheduling a hearing only seven days later, and failed to appear because he did not return home until after the scheduled time of the hearing.

Here, claimant requested a hearing on March 28, 2024; asked for a timeline for her appeal from the Department on April 23, 2024 but received no information; left for a brief trip to help her elderly father on May 13, 2024; was delivered a notice of hearing (she did not receive) on either May 11, 13 or 14, 2024, scheduling a hearing for Wednesday May 15, 2024; and failed to appear because she did not

return home until after the scheduled time of the hearing. Just as in *Bursell*, it would produce an unfair result to allow, in this case, the at most five-day window between the date the notice was delivered and the scheduled hearing to deprive claimant a hearing on the merits. Furthermore, as with the claimant's brief out-of-town trip to search for work in *Bursell*, it was not unreasonable for claimant to take a trip (eight days compared to about seven days in *Bursell*) to help her elderly father without anticipating both that the notice likely would arrive and that the hearing would be set within the time before her return.

Nor is it material that claimant failed to arrange for anyone to check her mail while she was away helping her father. She did not do so because she had experienced slow response times from the Department and so did not expect that OAH would both provide notice and then hold the hearing in the matter during the brief period that she was away. Claimant's failure to anticipate, because of slow response times, that OAH would both provide notice and then hold the hearing while she was away was reasonable given that the administrative decision in this case did not issue until approximately eight months after her work separation and that she received no information from the Department about what kind of timeline to expect when she contacted them on April 23, 2024. It is also immaterial that claimant did not notify OAH of her trip to visit her elderly father. This is so because the Court in *Bursell* acknowledged that the claimant in that case had failed to advise the agency of his trip, yet attached no significance to this fact, and arrived at the conclusion that the claimant had established good cause for failing to appear as a matter of law.

For these reasons, the record shows that claimant's failure to appear at the May 15, 2024, hearing arose from an excusable mistake and that claimant established good cause for failing to appear at the hearing as a matter of law.

Claimant established good cause to reopen the hearing. Claimant's request to reopen is therefore allowed, Order No. 24-UI-260459 is reversed, Order No. 24-UI-254285 is cancelled, and claimant is entitled to a hearing on the merits of the decision # L0003032043.

DECISION: Order No. 24-UI-260459 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: December 31, 2024

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 24-UI-260459 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 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 دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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