

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0103

Reversed
Merits Hearing Required¹

PROCEDURAL HISTORY: On March 22, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged by the employer for misconduct and disqualified from receiving 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 scheduled for May 6, 2024. On May 6, 2024, claimant failed to appear at the hearing, and ALJ Christon issued Order No. 24-UI-253578, dismissing claimant's request for hearing 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 hearing. On October 31, 2024, ALJ Chiller conducted a hearing, and on November 19, 2024, issued Order No. 24-UI-273839, denying claimant's request to reopen the hearing as late without good cause, leaving Order No. 24-UI-253578 undisturbed. On December 5, 2024, claimant filed an application for review of Order No. 24-UI-273839 with the Employment Appeals Board (EAB).

On January 8, 2025, EAB issued EAB Decision 2024-EAB-0829, reversing Order No. 24-UI-273839 by allowing claimant's late request to reopen, and remanding the matter for a hearing on the merits of decision # L0003237630. On January 10, 2025, notice was mailed to the parties that a hearing had been scheduled for January 22, 2025. On January 22, 2025, claimant failed to appear at the hearing. On January 29, 2025, ALJ Chiller issued Order No. 25-UI-281514, which did not address claimant's failure to appear at the January 22, 2025, hearing and contained only the text of Order No. 24-UI-273839. On February 17, 2025, claimant filed an application for review of Order No. 25-UI-281514 with EAB.

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is claimant's written statement

¹ As discussed in this decision and as previously directed in EAB Decision 2024-EAB-0829, **the notice of hearing on remand should be provided to claimant by email and text in accordance with claimant's accommodation request, in addition to the mailed notice required by rule.**

accompanying her application for review of Order No. 25-UI-281514, which has been marked as EAB Exhibit 1 and provided to the parties with this decision. 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 exhibit will remain in the record.

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 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 September 4, 2024, claimant made an accommodation request to OAH based on her neurological condition. Claimant requested that OAH provide notice of any hearing by email and text in addition to mail.

(3) On January 8, 2025, EAB issued EAB Decision 2024-EAB-0829, remanding the matter to OAH to conduct a hearing on the merits of decision # L0003237630 “consistent with. . . 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.” EAB Decision 2024-EAB-0829 at 4.

(4) On January 10, 2025, OAH mailed notice of a hearing scheduled for January 29, 2025, to claimant’s address of record. OAH did not provide notice to claimant by text or email. Claimant did not receive the mailed notice.

(5) On January 22, 2025, claimant failed to appear at the hearing because she was unaware that it was taking place.

(6) On January 29, 2025, Order No. 25-UI-281514 was issued, but the order did not address the January 22, 2025, hearing and instead contained the text of Order No. 24-UI-273839.

(7) On February 17, 2025, claimant filed an application for review of Order No. 25-UI-281514.

CONCLUSIONS AND REASONS: Order No. 25-UI-281514 is set aside and the matter remanded for a properly noticed hearing on the merits of decision # L0003237630.

OAR 471-040-0030 (August 1, 2004) provides, in relevant part:

(1) The administrative law judge shall promptly prepare and serve a written decision after the conclusion of the hearing.

(2) The administrative law judge’s decision shall be based upon the evidence in the hearing record and upon any stipulated or officially noticed facts. Any findings of fact by the administrative law judge shall be based upon reliable, probative, and substantial evidence.

* * *

OAR 471-040-0035 (August 1, 2004) provides, in relevant part, that on the administrative law judge's own initiative, an administrative law judge may order that a request for hearing be dismissed if the appellant fails to appear at the hearing at the time and place stated in the notice of hearing. OAR 471-040-0035(3)(c).

Due to an apparent clerical error, the order under review did not mention that a hearing was convened on January 22, 2025, or that claimant failed to appear at that hearing, and did not discuss whether the ALJ exercised their authority under OAR 471-040-0035(3)(c) to dismiss claimant's request for hearing due to her failure to appear on that occasion. It is therefore appropriate to remand the matter to OAH for further proceedings based on the order's failure to meet the requirements of OAR 471-040-0030.

Furthermore, claimant asserted in the statement accompanying her application for review that she missed the January 22, 2025, hearing due, at least in part, to OAH's failure to provide notice of the hearing by email and text. EAB Exhibit 1 at 1.² The record shows that claimant requested an accommodation on September 4, 2024, due to her medical condition, that hearing notices be communicated by those methods. Additionally, EAB Decision 2024-EAB-0829 directed OAH to comply with claimant's accommodation request in scheduling the hearing on the merits of decision # L0003237630. The notice of hearing provided to claimant was therefore insufficient.

Given the unusual circumstance of both the order under review and the notice of hearing underlying that order being legally insufficient, and in the interest of judicial economy, the January 22, 2025, hearing should be treated on remand as if it had not been scheduled or convened. **Accordingly, only the merits of decision # L0003237630 should be addressed on remand, and notice of the hearing should be provided to claimant by text, email, and mail.**

DECISION: Order No. 24-UI-273839 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: March 14, 2025

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 25-UI-281514 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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² Claimant also wrote in her statement that she had moved to a new address and did not receive the mailed hearing notice, but it is unclear when this move transpired and whether it was the cause of claimant not receiving it. EAB Exhibit 1 at 1. However, the move was not the proximate cause of claimant missing the hearing, regardless of the timing of the move, because of claimant's reasonable expectation that she would receive notice by email and text.

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

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