

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0145

Affirmed
Request to Reopen Denied

PROCEDURAL HISTORY: On November 1, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged, but not for misconduct, and therefore was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # L0006990998). The employer filed a timely request for hearing. On November 26, 2024, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for December 11, 2024. On December 11, 2024, the employer failed to appear at the hearing, and ALJ Adamson issued Order No. 24-UI-276307, dismissing the employer's request for hearing due to their failure to appear. On December 17, 2024, the employer filed a timely request to reopen the hearing. On February 6, 2025, ALJ Goodrich conducted a hearing, and on February 14, 2025, issued Order No. 25-UI-283200, denying the employer's request to reopen the December 11, 2024 hearing as without good cause and leaving Order No. 24-UI-276307 undisturbed. On March 5, 2025, the employer filed an application for review of Order No. 25-UI-283200 with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: The employer did not state that they provided a copy of their argument to claimant 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 the employer's reasonable control prevented them from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only the information received into evidence at the hearing. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) On November 1, 2024, the Department served notice of decision # L0006990998 to the employer's address of record, which was the address of the employer's dispensary in Eugene, Oregon. On November 14, 2024, the employer filed a timely request for hearing on decision # L0006990998.

(2) On November 26, 2024, OAH served notice of a hearing scheduled for December 11, 2024, at 10:45 a.m. OAH mailed the notice to the employer's Eugene address.

(3) The owner of the business and the operations manager primarily worked from the employer's grow facility in Portland, Oregon. When business-related mail was delivered to the Eugene dispensary address, the store manager was required, by policy, to scan the mail and then email it to the operations manager. The operations manager would then forward it to the owner, who handled all business correspondence.

(4) On December 3, 2024, the owner contacted the Department via Frances Online because he had not received information on when the hearing was scheduled. The Department did not respond to the owner's message.

(5) On December 11, 2024, the employer failed to appear at the hearing because the owner had not received the notice of hearing at that point. On the same day, ALJ Adamson issued Order No. 24-UI-276307, dismissing the employer's request for hearing due to their failure to appear.

(6) On December 17, 2024, the employer filed a request to reopen the hearing. On that request, which was drafted by the operations manager, the employer stated, in relevant part, "It has come to our attention that the manager at the dispensary did not scan and submit the documents in a timely manner, which prevented us from being aware of the scheduled hearing." Exhibit 3 at 1.

CONCLUSIONS AND REASONS: The employer's request to reopen is denied. Order No. 24-UI-276307 remains undisturbed.

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 determining whether good cause exists for failing to appear at the hearing. OAR 471-040-0040(3).

The employer filed their request to reopen the hearing within 20 days of the date on which Order No. 24-UI-276307 was issued, and also included with the request a written explanation of why they failed to appear at the hearing. The employer's request therefore followed the requirements of OAR 471-040-0040(1)(b) and (3). However, the employer has not met their burden to show that they had good cause for failing to appear at the December 11, 2024, hearing.

The employer produced two witnesses at the February 6, 2025, hearing: the owner and the operations manager. Each witness presented somewhat conflicting testimony regarding the receipt of the notice of hearing. The owner testified that he never received the notice of hearing, and that when he asked the dispensary employees about the notice of hearing, they told him that they never received it. Audio Record at 33:20, 38:56. The operations manager, by contrast, testified that while he was not certain when the dispensary store manager received the notice of hearing, by the time she had scanned it and forwarded it to him, the hearing had already passed. Audio Record at 46:32. The operations manager's testimony aligns more closely with the narrative contained in the request to reopen. Further, the request to reopen itself was drafted less than a week after the employer failed to appear at the hearing, whereas the above testimony was given almost two months after the fact. Therefore, the near-contemporaneous account in the request to reopen, and the operations manager's testimony that aligns with that account, are more likely accurate.

As noted above, the record does not show when the employer (by way of the dispensary store manager) initially received the notice of hearing. A letter duly directed and mailed is presumed to be received in the regular course of the mail. *See, e.g.*, ORS 40.135(1)(q); OAR 137-003-0520(10) (January 31, 2012). Because the employer has not offered evidence to show that the notice of hearing was not timely delivered in the regular course of the mail, it is presumed that the notice of hearing was timely delivered within a few business days of when it was initially mailed. As such, the record suggests that the employer timely received the notice of hearing, but that the store manager failed to scan and forward it to the operations manager early enough for the owner to have appeared at the December 11, 2024, hearing. As it was within the employer's reasonable control to ensure that their employees promptly forwarded time-sensitive business correspondence, the employer did not fail to appear at the hearing due to factors beyond their reasonable control.

Likewise, although the employer's failure to ensure that all business correspondence was being timely forwarded to the owner was likely the result of a mistake on the employer's part, it was not an "excusable mistake" within the meaning of the administrative rules because it did not, for example, raise a due process issue, and was not the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply.

For the above reasons, the employer has not shown good cause for failing to appear at the December 11, 2024, hearing. The employer's request to reopen the hearing is therefore denied, and Order No. 24-UI-276307 remains undisturbed.

DECISION: Order No. 25-UI-283200 is affirmed.

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

DATE of Service: April 1, 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

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 باتباع 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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