

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0171

Reversed
Request to Reopen Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On October 24, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged by the employer, but not for misconduct, and was not disqualified from receiving benefits based on the work separation (decision # L0006784441). The employer filed a request for hearing. On December 27, 2024, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for January 9, 2025. On January 9, 2025, ALJ Chiller conducted a hearing at which claimant failed to appear, and on January 15, 2025, issued Order No. 25-UI-279872, reversing decision # L0006784441 by concluding that claimant was discharged for misconduct and disqualified from receiving benefits effective July 28, 2024. On January 29, 2025, claimant filed a timely request to reopen the hearing. On February 20, 2025, ALJ Chiller conducted a hearing at which the employer failed to appear, and on February 24, 2025, issued Order No. 25-UI-284000, denying claimant's request to reopen the January 9, 2025, hearing and leaving Order No. 25-UI-279872 undisturbed. On March 16, 2025, claimant filed an application for review of Order No. 25-UI-284000 with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant did not state that she provided a copy of her argument to the employer 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 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).

The parties may offer new information, such as the information contained in claimant's written argument, into evidence at the remand hearing. At that time, it will be determined if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing regarding documents they wish to have considered at the hearing. These instructions will direct

the parties to provide copies of such documents to the ALJ and the other parties in advance of the hearing at their addresses as shown on the certificate of mailing for the notice of hearing.

FINDINGS OF FACT: (1) When claimant filed her initial claim for benefits, she elected via Frances Online to receive all communications from the Department electronically. Claimant had never previously filed a claim for unemployment insurance benefits.

(2) The Department's communications to claimant regarding the work separation addressed in decision # L0006784441 were all issued to claimant via her Frances Online account. In light of this, and the election she had made to receive all correspondence electronically, claimant believed that she would continue to receive all notices pertaining to her claim via Frances Online.

(3) Claimant checked her mail approximately once per month, as she typically did not receive important information via mail, and was accustomed to receiving only junk mail.

(4) On December 27, 2024, OAH served notice of a hearing scheduled for January 9, 2025. The notice was mailed to claimant's correct address of record. Claimant did not receive the notice of hearing prior to January 9, 2025, because she believed she would receive all notices pertaining to her claim via Frances Online. Claimant never received any communication via Frances Online indicating that the employer had appealed decision # L0006784441 or that a hearing had been scheduled.

(5) On January 15, 2025, Order No. 25-UI-279872 was mailed to claimant's address of record. Shortly thereafter, claimant checked her mail, at which point she found that both the notice of hearing and Order No. 25-UI-279872 had been delivered.

(6) On January 29, 2025, claimant filed a request to reopen the January 9, 2025, hearing.

CONCLUSIONS AND REASONS: Order No. 25-UI-284000 is reversed. Claimant's request to reopen the January 9, 2025, hearing is allowed, and claimant is entitled to a hearing on the merits of decision # L0006784441.

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).

Claimant filed her request to reopen the hearing within 20 days of the date on which Order No. 25-UI-279872 was issued, and also included with the request a written explanation of why she failed to appear at the hearing. *See* Exhibit 1 at 1–2. Claimant's request therefore followed the requirements of OAR 471-040-0040(1)(b) and (3). However, the order under review concluded that claimant did not have good cause for failing to appear at the hearing. Order No. 25-UI-284000 at 4. The record does not support this conclusion.

Claimant failed to appear at the hearing because she did not receive the notice of hearing that was mailed to her. This, in turn, was the result of claimant's belief that she would receive all notices and correspondence regarding her claim electronically, in accordance with the election she made in her Frances Online account. Claimant was mistaken in this belief, in that her election did not apply to documents sent by OAH. However, in light of the facts that all of the prior correspondence on her claim had come electronically, that she had no electronic notice that the employer had filed a request for hearing, and that she had no prior experience with the claims process, this mistaken belief was excusable. As such, claimant failed to appear at the hearing due to an excusable mistake, which constitutes good cause. Claimant's request to reopen the January 9, 2025, hearing therefore is allowed, and claimant is entitled to a hearing on the merits of decision # L0006784441.

DECISION: Order No. 25-UI-284000 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: April 15, 2025

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 25-UI-284000 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 دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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