

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0385

Reversed
Request to Reopen Allowed
Merits Hearing Required

PROCEDURAL HISTORY: On April 18, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not authorized to work in the United States, was not eligible to receive unemployment insurance benefits effective March 17, 2024, and that as a result, claimant had been overpaid \$1,272 in benefits that they were required to repay to the Department and would be required to serve another waiting week (decision # L0003761984). Claimant filed a timely request for hearing. On March 14, 2025, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for March 27, 2025. On March 27, 2025, claimant failed to appear at the hearing. On March 28, 2025, ALJ Micheletti issued Order No. 25-UI-287642, dismissing claimant's request for hearing due to their failure to appear.

On April 14, 2025, claimant filed an application for review of Order No. 25-UI-287642 with the Employment Appeals Board (EAB). On April 16, 2025, EAB mailed a letter notifying claimant that under OAR 471-041-0060(4) (May 13, 2019), their application for review was being treated as a request to reopen the March 27, 2025 hearing, that EAB was sending claimant's reopen request to OAH for further processing, and that EAB would take no further action. At OAH, ALJ Kangas considered claimant's request, and on June 16, 2025, issued Order No. 25-UI-295066, denying the request as without good cause and leaving Order No. 25-UI-287642 undisturbed. On June 24, 2025, claimant filed an application for review of Order No. 25-UI-295066 with EAB.

WRITTEN ARGUMENT: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). Claimant's argument contained information that was not part of the record, but the information is relevant, material, and necessary to complete the record and it can reasonably be inferred from the record that factors or circumstances beyond claimant's reasonable control prevented them from previously offering the information into the hearing record. *See* ORS 657.275(2) and OAR 471-041-0090(1). This information consists of an explanation for why claimant failed to appear at the hearing, and was not included with claimant's reopen request, despite a note on the form advising them to include such a statement. Exhibit 5 at 2. However, the record shows that

claimant indicated on their request for hearing that their preferred language is Farsi, and that they required an interpreter. Exhibit 2 at 3. Based on this, it is reasonable to infer that claimant did not understand this requirement due to a language barrier, which was a factor beyond claimant's reasonable control.

The information has been marked and admitted as EAB Exhibit 1. Any party that objects to EAB admitting EAB Exhibit 1 must send their objection to EAB in writing, explaining 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) On April 18, 2024, the Department mailed decision # L0003761984 to claimant's address on file with the Department. On the same day, claimant filed a timely request for hearing.

(2) On March 1, 2025, eleven months after claimant initially filed a request for hearing, claimant left the United States for a period of time. EAB Exhibit 1 at 1. Claimant was unable to make phone calls to the United States while they were out of the country. Exhibit 1 at 1.

(3) On March 14, 2025, OAH served notice of a hearing scheduled for March 27, 2025. On March 27, 2025, claimant failed to appear at the hearing.

(4) On April 12, 2025, claimant returned to the United States. On April 14, 2025, claimant filed a request to reopen the March 27, 2025 hearing.

CONCLUSIONS AND REASONS: Claimant's request to reopen the hearing is allowed, and claimant is entitled to a hearing on the merits of decision # L0003761984.

ORS 657.270(5) states 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 must state 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 a request to reopen the hearing on April 14, 2025 within 20 days of the order dismissing the request for hearing due to their failure to appear. Although claimant did not initially include a written explanation for their failure to appear with the reopen request, the record now contains such a written explanation. That explanation shows that claimant had good cause for failing to appear at the hearing.

Claimant left the country on March 1, 2025, and was unable to contact the United States by phone while they were out of the country. The notice of hearing was mailed to them nearly two weeks later, while they were still out of the country, and they did not return until more than two weeks after the hearing itself was convened. Thus, it can be inferred that claimant did not actually have notice of the hearing until they returned to the United States. Further, given that the notice of hearing was not mailed to

claimant until nearly a year after claimant filed their request for hearing, it is reasonable to conclude that claimant neither knew nor had reason to know that they should expect one to arrive in the mail while they were out of the country. Additionally, even if claimant did have notice of the hearing, they would not have been able to attend, as they could not contact the United States by phone. Therefore, the record shows that claimant failed to appear at the hearing due to factors or circumstances beyond their reasonable control. As such, claimant had good cause for failing to appear at the hearing, and claimant's request to reopen the hearing is allowed.

DECISION: Order No. 25-UI-295066 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: July 30, 2025

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 25-UI-295066 or return this matter to EAB. Only a timely application for review of the order mailed to the parties after the remand hearing will return this matter 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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The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.