

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1330

Reversed
Eligible

PROCEDURAL HISTORY: On May 9, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit working for Nike Retail Services Inc. on January 18, 2014 without good cause (decision # 92127). On May 16, 2014, claimant filed a request for hearing on decision # 92127. On May 21, 2014, the Office of Administrative Hearings (OAH) issued notice of a hearing scheduled for June 5, 2014 at 9:30 a.m. On June 5, 2014, ALJ M. Triana issued Hearing Decision 14-UI-19009, dismissing claimant's request for hearing for failure to appear. Claimant filed a timely request to reopen the hearing. On June 26, 2014, ALJ Kangas reviewed claimant's request to reopen and issued Hearing Decision 14-UI-20428, denying claimant's request. On July 2, 2014, the Department served notice of an administrative decision concluding that claimant is ineligible for benefits from May 4 through June 28, 2014 (decision # 122919). On July 16, 2014, claimant filed an application for review of Hearing Decision 14-UI-20428 with the Employment Appeals Board (EAB), and a request for hearing on decision # 122919. On July 17, 2014, EAB issued Appeals Board Decision 2014-EAB-1214, affirming Hearing Decision 14-UI-20428. On August 5, 2014, ALJ Kirkwood conducted a hearing on decision # 122919, and on August 6, 2014 issued Hearing Decision 14-UI-22900, concluding that claimant is ineligible for benefits from May 4 through August 2, 2014. On August 8, 2014, claimant filed an application for review of Hearing Decision 14-UI-22900 with EAB.

FINDINGS OF FACT: (1) On April 1, 2014, claimant filed a claim for benefits. Claimant claimed benefits for the weeks from May 4 through August 2, 2014 (weeks 19-14 through 31-14), the weeks at issue. The Department did not pay claimant benefits for those weeks.

(2) On May 9, 2014, the Department mailed claimant a letter asking her to provide information required for processing her claim, including the name, mailing address and telephone number of her most recent employer, the start and end dates of her employment, her gross wages, job title, and reasons for her work separation. The Department instructed claimant to provide the information within 5 days.

(3) As of May 14, 2014, claimant had not yet received decision # 92127, concluding that claimant quit work without good cause. That day, claimant telephoned the Department and asked why she was not paid benefits for week 19-14. A Department employee told claimant she was not paid benefits for that week because of decision # 92127. Claimant told the Department employee she had not yet received decision # 92127. The Department employee told claimant that if she disagreed with the decision, she could request a hearing with OAH.

(4) Claimant telephoned the Department again on May 14, 2014 and was told by a Department employee that she could request a hearing on decision # 92127. Claimant told the Department employee that she would wait until she received the decision to see why she was denied benefits, asserting that she was laid off due to a lack of work, and did not quit.

(5) On May 16, 2014, claimant again telephoned the Department and asked why she was not paid benefits. A Department employee again told claimant she was not paid benefits because of decision # 92127, and that she could request a hearing on that decision.

(6) Claimant telephoned the Department again on May 16, 2014 and requested a hearing on decision # 92127.¹

(7) On June 2, 2014, claimant again telephoned the Department and asked why she was unable to claim benefits online. A Department employee told claimant that if the claimed benefits on a Friday or Saturday, she needed to wait until Tuesday for the claim to process.

(8) On June 5, 2014, claimant again telephoned the Department and asked why she did not receive a call for her hearing on decision # 92127. A Department employee told claimant she was supposed to have called in for the hearing.

(9) On June 25, 2014, claimant again telephoned the Department regarding the status of her claim for benefits. A Department employee instructed claimant to contact EAB.

(10) On July 7, 2014, claimant again telephoned the Department regarding her claim. A Department employee told claimant her only option was to proceed with EAB.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude that claimant is eligible for benefits for the weeks at issue.

ORS 657.155(b) provides that an unemployed individual shall be eligible to receive benefits with respect to any week only if the individual has made a claim for benefits with respect to such week in accordance with ORS 657.260. ORS 657.260(1) provides that claims for benefits shall be filed in accordance with such regulations as the Department may prescribe. OAR 471-030-0025 (December 16, 1985) states that with all claims, an individual shall furnish the Department with information required for processing their claim. Such information may include, but is not limited to, information pertaining

¹ We take notice of finding of facts (3) through (6), which are contained in Employment Department records. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain.

to prior work history, separations from work, current work activity and earnings, licenses or permits held, self-employment, entitlement to pay and allowances of various kinds, work seeking activity, working restrictions, and working ability. *Id.* With respect to work activity or self-employment during any week claimed, the information required may include the type of work activity, the amount of time devoted to such activity, the gross and net amount of compensation, remuneration, wages, commission, salary, or income, if any, received or expected to be received, and any other factors material to a determination of eligibility for benefits. *Id.*

In Hearing Decision 14-UI-22900, the ALJ concluded that claimant is ineligible for benefits for the weeks at issue because she did not provide the Department the information it instructed her to provide by May 14, 2014.² However, claimant telephoned the Department a minimum of eight times from May 14, 2014 through the weeks at issue. On no occasion did the Department ask for the information it requested on May 9, 2014, or tell claimant that she needed to provide the information. On the last two occasions, the Department instructed claimant to contact or proceed with EAB, thereby depriving claimant of an opportunity to provide the information to the Department. On May 14, 2014, claimant twice telephoned the Department, asked why she was not being paid benefits, and was told only that it was because of decision # 92127, and that she could request a hearing on that decision. On neither occasion was claimant told that she also needed to provide the information requested by the Department on May 9, 2014. Absent evidence that claimant was asked for, and failed to provide, the information on May 14, 2014, we find her two contacts with the Department sufficient to comply with requirement that she furnish the information by that date.

We therefore conclude that claimant is eligible for benefits for the weeks at issue.

DECISION: Hearing Decision 14-UI-22900 is set aside, as outlined above.

Tony Corcoran and J. S. Cromwell;
Susan Rossiter, not participating.

DATE of Service: September 10, 2014

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 listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the website at court.oregon.gov. Once on the website, click on the blue tab for “Materials and Resources.” On the next screen, click on the tab that reads “Appellate Case Info.” On the next screen, select “Appellate Court Forms” from the left panel. On the next page, select the forms and instructions for the type of Petition for Judicial Review that you want to file.

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² Hearing Decision 14-UI-22900 at 2.