

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0084

Affirmed
Ineligible

PROCEDURAL HISTORY: On December 2, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not eligible for benefits for the week November 1 through November 7, 2015 (week 44-15) because he failed to participate in a required Reemployment and Eligibility Assessment (REA). Claimant filed a timely request for hearing. On December 30, 2015, ALJ Seideman conducted a hearing, and on January 6, 2016, issued Hearing Decision 16-UI-50514, concluding claimant was not eligible for benefits for the weeks of November 1 through November 28, 2015 (weeks 44-15 through 47-15) for failure to participate in a required REA. On January 25, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On September 16, 2015, claimant filed an initial claim for unemployment insurance benefits. He filed weekly claims for benefits for the weeks November 1 through November 28, 2015 (weeks 44-15 through 47-15), the weeks at issue.

(2) On October 13, 2015, claimant participated in an initial Reemployment Eligibility Assessment (REA) interview with a Department representative. On October 26, 2015, the Department mailed to claimant's address of record a notice stating he was required to complete a second Reemployment Eligibility Assessment (REA2) interview by telephone no later than November 6, 2015 "to improve your job search and connect you with local Work Source Oregon services..." The notice notified claimant of the telephone number he was to call to complete the interview and stated as follows: "Failure to complete your second REA interview will result in a denial of unemployment benefits. Benefits will remain denied until you've completed your second REA interview." Transcript at 6.

(3) On November 2, 2015, claimant contacted the Department to discuss his claim for another reason and a Department employee advised claimant that the Department had sent him a letter notifying him that he was required to complete a second REA interview by November 6. He agreed to call the Department's REA line on November 4 or November 6, 2015 for the interview but did not do so or attempt to reschedule.

(4) Claimant did not complete the required REA2 assessment interview by November 6, 2015 and the Department suspended payment of benefits to him for that reason. Around December 2, 2015, claimant checked his bank account, became aware he had not been receiving benefit payments for the weeks at issue, contacted the Department and learned why payment of benefits had been suspended. On December 4, 2015, during week 48-15, he completed the required REA2 assessment interview by phone, which lasted about 10 minutes.

CONCLUSIONS AND REASONS: We agree with the ALJ. Claimant is ineligible for benefits for the weeks November 1 through November 28, 2015 (weeks 44-15 through 47-15) because he failed to complete a required REA2 process until December 4, 2015.

An unemployed individual is eligible for benefits if, among other requirements, the individual has "registered for work at and thereafter has continued to report at an employment office in accordance with such rules as the director may prescribe." ORS 657.155(1)(a). To satisfy this requirement, when requested by the Department, an individual must submit information to an authorized representative about the individual's job qualifications, skills training and experience when the information is deemed necessary to carry out job placement services. OAR 471-030-0035(2) (December 25, 2005). As part of this process, the Department may require individuals to engage in and complete an REA2 interview process to assist the Department in assessing a claimant's work history, job skills and related employment information. However, that requirement may be waived or altered when compliance with the requirement "would be oppressive." ORS 657.155(1)(a).

At hearing, claimant asserted that he never received the Department's October 26 letter it mailed that day to his address of record. Transcript at 18. However, OAR 137-003-0520(10) sets forth the presumption of receipt of mailed documents and provides as follows: "Documents sent through the U.S. Postal Service by regular mail are presumed to have been received by the addressee, subject to evidence to the contrary." Claimant had not experienced any problems receiving his mail at his residence address and did not dispute that a Department representative told him on November 2 that he needed to complete a second REA interview by November 6 and that the Department had sent him a letter to that effect. He also did not dispute that he told the Department representative on November 2 when discussing the letter the Department sent that he "probably has it and will find it..." Transcript at 18, 22-24. Viewing the record as a whole, claimant did not overcome the presumption that he received the Department's October 26 letter setting forth his REA2 requirement and deadline. Moreover, claimant admitted that he tentatively agreed to call the Department's REA line on November 4 or 6, 2015. Transcript at 22-24.

Had claimant made a single phone call to the Department and engaged in a phone interview lasting approximately 10 to 30 minutes on November 4 or 6, 2015, as he was advised to do on November 2, his benefits would not have been suspended. When asked why he did not complete the required REA2 interview by November 6, claimant responded, "I don't remember what the time I was supposed to call in was, but I had something going on. I don't remember what." Transcript at 23-24. Compliance with

the Department's requirement that claimant call to complete an REA2 assessment interview by November 6, 2015, was not "oppressive" as applied to claimant, and he was not entitled to a waiver of the Department's REA requirements.

Claimant failed to report to the Department in accordance with its rules until December 4, 2015. Consequently, claimant is ineligible for benefits for the weeks November 1 through 28, 2015 (weeks 44-15 through 47-15).

DECISION: Hearing Decision 16-UI-50514 is affirmed.

Susan Rossiter and J. S. Cromwell

DATE of Service: February 16, 2016

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 Court of Appeals website at courts.oregon.gov. Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

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