

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-1182**

*Affirmed*  
*Ineligible*

**PROCEDURAL HISTORY:** On July 18, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not eligible to receive benefits from June 26, 2016 through July 2, 2016 because he failed to attend a Reemployment and Eligibility Assessment (REA) appointment as directed. Claimant filed a timely request for hearing. On August 17, 2016 ALJ Murdock convened a hearing at which claimant did not appear and issued Hearing Decision 16-UI-65856, dismissing claimant's hearing request for failure to appear. On September 5, 2016, claimant filed a request to reopen the hearing. On September 29, 2016, ALJ Murdock conducted a hearing, and on October 3, 2016 issued Hearing Decision 16-UI-68478, allowing claimant's request to reopen the hearing and concluding claimant was not eligible to receive benefits from June 26, 2016 through July 16, 2016 because he failed to attend an REA as directed. On October 24, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

Because no adversely affected party sought review of the portion of Hearing Decision 16-UI-68478 that allowed claimant's request to reopen, EAB confined its review to the issue of claimant's eligibility to receive benefits.

**FINDINGS OF FACT:** (1) Sometime before April 25, 2016, claimant filed a claim for unemployment insurance benefits which was determined to be valid. Claimant filed claims for benefits during the weeks of June 26, 2016 through July 16, 2016 (weeks 26-16 through 28-16), the weeks at issue.

(2) On April 25, 2016, claimant went to the WorkSource Oregon office in Gresham, Oregon and attended an REA that had been scheduled for him by the Department. On June 2, 2016, claimant attended a second REA that the Department had scheduled for him at the Gresham WorkSource office.

(3) On June 20, 2016, the Department mailed a notice to claimant at his address of record stating that he needed to participate in a third REA no later than July 1, 2016. The notice stated that attendance at the

REA would be by phone and gave instructions for placing the call. The notice was not returned to the Department as undeliverable. Claimant did not attend the required REA on or before July 1, 2016. On July 1, 2016, the Department mailed a notice to claimant at his address of record stating that it had no record that he had attended the required REA and he was out of compliance with the Department's requirements.

(4) From July 3, 2016 until July 6, 2016 claimant was in Romania or travelling to Romania. On or about July 3, 2016, claimant claimed benefits online for the week of June 26, 2016 through July 2, 2016 (week 26-16). On July 4, 2016, claimant went online from the country of Austria to check the status of the claim he had filed on July 3, 2016. When claimant did so, a notice that benefit payments to him were suspended appeared on the line on the screen showing the status of his weekly claim. The notice directed claimant to contact the Department about the issues that had caused the suspension and provided the phone number he should call. On July 5, 2015, the Department mailed a letter to claimant at his address of record which stated that benefits were not being paid to him for week 26-16 because he had not attended an REA by July 1, 2016 (in week 26-16). Around this time, claimant noticed that a payment for benefit week 26-16 had not been electronically deposited in this bank account. On approximately July 7, 2016, claimant returned to Oregon.

(5) Sometime before July 15, 2016, claimant filed online a claim for benefits for the week of July 3, 2016 through July 9, 2016 (week 27-16). On July 15, 2016, claimant checked the status of the claim he had filed for week 27-16. The same notices appeared on the claim status line as had on July 4, 2016. Sometime after July 15, 2016, claimant filed a claim for benefits for the week of July 10, 2016 through July 16, 2016.

(6) On July 18, 2016, claimant visited the Gresham WorkSource office to schedule his third REA appointment. Claimant was told he was expected to attend the REA by phone and he was provided the number to do so. On July 18, 2016 (in week 29-18), claimant called the Department and completed the third REA.

**CONCLUSIONS AND REASONS:** Claimant was not eligible to receive benefits from June 26, 2016 through July 16, 2016 because he did not attend an REA as instructed by the Department until July 18, 2016.

ORS 657.155(1)(a) provides that an unemployed individual shall be eligible to receive benefits for any week only if the individual has registered for work and complied with such rules or requirements as the Department may prescribe unless compliance with such requirements would be oppressive or inconsistent with the purposes of ORS chapter 157.. ORS 657.156(2) provides that individuals shall be eligible to receive benefits for any week only if the individual has participated reemployment services as directed by the Department. OAR 471-030-0034 (September 29, 1997) sets out the factors the Department may consider in determining whether individuals are eligible for reemployment services. The Department instructed to attend the REAs to determine whether he should participate in reemployment services.

The Department's instruction that claimant attend a third REA by phone before July 1, 2016 did not appear to impose an oppressive requirement on claimant and nothing in his testimony suggested that it did. While claimant contended he never received the three notices that the Department mailed to him at

his address of record about his need to participate in an REA before July 1, 2016 to receive benefits, on June 20, 2016, July 1, 2016 and July 5, 2016, he did not provide an explanation for why he did not receive them, other than his speculation that they might have been mis-delivered or that a member of his household might have misplaced them upon their arrival. Transcript at 22, 23, 24, 26. It is not likely that three notices mailed in such a limited period of time would all have been lost in the mail or misplaced. Also, while claimant agreed it was his usual practice to check the status of his claim online within a few days of making his weekly claim to ensure it was properly submitted, he contended that he could not remember if he did so for his claims for weeks 26-16, 27-16 and 28-16, but if he did so, for some inexplicable reason, the Department's online system did not alert him to the fact there would be no benefits paid for those weeks and instruct him to contact the Department to resolve why his claim was suspended. Transcript at 34, 35, 36. As with the mailed notices claimant asserted he did not receive, it is implausible that claimant would deviate from his habit of checking the status of the claims he had submitted only during weeks 26-16, 27-16 and 28-16 when he would have been notified that something was interfering with his receiving benefits (such as his failure to attend the REA by July 1, 2016) or that the Department's online system would have malfunctioned during all of these weeks and failed to notify him of the suspension of his claim. The preponderance of the evidence in this record is that claimant likely received the mailed notices or, if he did not, he was reasonably aware through regularly checking the status of his claim online that he was not receiving the benefits he claimed for weeks 16-16 through 28-16 and had he followed the Department's online instructions he would have been informed that it was his failure to participate in the REA by July 1, 2016 that had caused him not to receive those benefits. Since it is not plausible that all of these systems simultaneously malfunctioned, most likely claimant was notified of the requirement that he attend the REA to maintain his eligibility to receive benefits.

Claimant was likely aware of the requirement that he needed to participate in the REA before July 1, 2016, and that he was not eligible to receive benefits unless and until he complied with that requirement. Claimant's failure to attend the REA until July 18, 2016 rendered him not eligible to receive benefits from June 26, 2016 through July 16, 2016 (weeks 26-16 through 28-16).

**DECISION:** Hearing Decision 16-UI-68478 is affirmed.

Susan Rossiter and J. S. Cromwell;  
D. P. Hettle, not participating.

**DATE of Service:** November 22, 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](http://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.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.

