

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0131

Affirmed
Review is Not Allowed

PROCEDURAL HISTORY AND FACTS: On March 31, 2016, claimant filed an initial claim for unemployment insurance benefits (BYE 12-17). Effective March 27, 2016 through May 14, 2016 (weeks 13-16 to 19-16), claimant filed weekly claims for benefits and was denied benefits each week.¹ He stopped claiming benefits after May 14, 2016 (week 19-16).

On June 13, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work at White's Restaurant on March 27, 2016, and was denied benefits from March 27, 2016 until he "earned and received remuneration from employment . . . in an amount at least equal to four times the weekly benefit amount subsequent to the week in which the separation occurred." Decision # 112231. On June 20, 2016, claimant filed a timely request for hearing on decision # 112231. On July 11, 2016, ALJ Shoemake conducted a hearing, and on July 18, 2016 issued Hearing Decision 16-UI-63939, affirming the Department's decision that claimant was disqualified from receiving benefits due to his work separation from White's Restaurant until he "requalified under Employment Department law." On August 8, 2016, Hearing Decision 16-UI-63939 became final without claimant having filed an application for review of that decision with the Employment Appeals Board (EAB).

Effective December 18, 2016, claimant restarted his claim. He filed weekly claims for unemployment benefits beginning December 18, 2016 through January 28, 2016 (weeks 51-16 to 4-17) and was denied benefits each week.

On December 28, 2016, the Department mailed a letter to claimant stating that the benefits he claimed for the week of December 18, 2016 to December 24, 2016 (week 51-16) could not be paid because "an issue is being resolved on your claim" and because "an administrative decision found that you

¹ We take notice of the weeks claimant claimed benefits under BYE 12-17 and decision # 151613, information which is 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 in the record.

voluntarily left work without good cause.” On December 29, 2016, the Department issued decision # 151613, concluding that claimant’s discharge from Cedar Village was not for misconduct. Decision # 151613 allowed claimant benefits.²

On December 31, 2016, claimant sent a letter titled “Request for Hearing” to the Office of Administrative Hearings (OAH) disputing the Department’s December 28, 2016 letter and asserting he was entitled to benefits. On January 4, 2017, OAH mailed a letter to claimant – assigned order number 17-UI-74050 for case-tracking purposes – stating that OAH was “unable to set up a hearing based on your request” because “no decision or determination has been made,” and that “[b]y this letter, your request for hearing is dismissed for lack of jurisdiction and your file is closed.”³

Also on January 4, 2017, the Department mailed a letter to claimant stating that the benefits he claimed for the week of December 25, 2016 to December 31, 2016 (week 52-16) could not be paid because “[a]n administrative decision found that you voluntarily left work without good cause.” On January 6, 2017, claimant sent another letter to OAH titled “Request for Hearing” in which he disputed the Department’s January 4th letter. Pursuant to OAR 471-041-0060, claimant’s January 6, 2017 letter is construed as an application for review of OAH’s order number 17-UI-74050, the January 4, 2017 letter to claimant.

On January 10, 2017, the Department mailed a letter to claimant stating that the benefits he claimed for the week of January 1, 2017 to January 7, 2017 (week 1-17) could not be paid because “[a]n administrative decision found that you voluntarily left work without good cause.” On January 16, 2017 and January 19, 2017, claimant sent letters to OAH titled “Request for Hearing” in which he disputed the Department’s January 10th letter.

On January 18, 2017, the Department mailed a letter to claimant stating that the benefits he claimed for the week of January 8, 2017 to January 14, 2017 (week 2-17) could not be paid because “[a]n administrative decision found that you voluntarily left work without good cause.” On January 23, 2017 claimant sent another letter to OAH titled “Request for Hearing” in which he disputed the Department’s January 18th letter.

On January 24, 2017, the Department mailed a letter to claimant stating that the benefits he claimed for the week of January 14, 2017 to January 21, 2017 (week 3-17) could not be paid because “[a]n administrative decision found that you voluntarily left work without good cause.”⁴ On January 30, 2017, claimant sent another letter to OAH titled “Request for Hearing” in which he disputed the Department’s January 24th letter. In that letter, claimant stated that the disqualification based on his

² Each of claimant’s letters to OAH included an argument that claimant should not be disqualified from receiving benefits because of a work separation from a business called Cedar Village. Department records show, however, that claimant was not denied benefits because of his work separation from Cedar Village. *See* Decision # 151613. It appears that decision # 151613 has become final without Cedar Village having requested a hearing.

³ The January 4, 2017 letter from OAH referenced a base year extension issue, but it appears that reference was made in error.

⁴ We note that Department records show that claimant has also claimed the week of January 22, 2017 to January 28, 2017 (week 4-17) and that week has been denied because of a voluntary leaving issue; at the time of this decision it appears that claimant has not yet sent a letter titled “Request for Hearing” about that week of benefits or a letter disputing the Department’s failure to pay him benefits for that week.

voluntary leaving from White's "is not applicable since then I earned over \$5000.00 working at Cedar Village" and that the Department "cannot use that order to deny me my unemployment benefits."

CONCLUSIONS AND REASONS: We agree with OAH's January 4, 2017 letter, order number Hearing Decision 17-UI-74050, that we lack jurisdiction to review claimant's "Request[s] for Hearing" on the Department's letter(s), and that claimant's "requests" must be dismissed.

In the context of this case, only administrative decisions issued under ORS 657.267 and ORS 657.268 are subject to review by an administrative law judge, and only orders based on that review and issued by an administrative law judge are subject to review by EAB. *See* ORS 657.269, ORS 657.270, ORS 657.275. The administrative decision in this case was decision # 112231, *not* the weekly letters the Department mailed to claimant stating that benefits will not be paid. The weekly letters are merely letters informing claimant that benefits will not be paid to him because of decision # 112231. Claimant has already had a hearing on decision # 112231, and the hearing decision establishing the disqualification became final on August 8, 2016.⁵ Claimant is not entitled to another hearing in that case. Likewise, because the Department's weekly letters are not decisions, claimant is not entitled to a hearing about them, and we have no jurisdiction to review them, either.

At its core, claimant's assertion is not that he should not be disqualified from benefits because of his separation from White's, it is that he has, since decision # 112231, requalified for benefits by earning \$5,000 from working for Cedar Village. We have reviewed Department records, however, and it appears that the Department is unaware of any earnings that might requalify claimant for benefits. Our review of Department records also indicates that claimant has not had any direct contact with the Department to report that he believes he has requalified, nor does it appear that claimant has provided the Department with wage records establishing that he has requalified. Claimant's only legal recourse at this point would be to contact the Department about his belief that he has requalified for benefits.

For the reasons stated, claimant's application for review of order number 17-UI-74050 is dismissed, and EAB will take no further action on this matter.

We note that we have provided the Department with copies of claimant's December 31, 2016, January 6, 2017, January 16, 2017, January 19, 2017, January 23, 2017 and January 30, 2017 letters in which he asserted that the Department's weekly denial letters were incorrect. If claimant would like to establish that he has requalified for benefits since decision # 112231, he should do so by directly contacting the Department's UI Center as follows:

Oregon Employment Department
UI Center
PO Box 14135
Salem, Oregon 97309-5068

Phone: (503) 292-2057
Toll Free: (877) 345-3484
Fax: (866) 345-1878

DECISION: Hearing Decision 17-UI-74050 is affirmed.

⁵ We note that nothing in claimant's "Request for Hearing" letters indicates a dispute with that decision or an intent to appeal it to EAB.

Susan Rossiter, J. S. Cromwell and D. P. Hettle.

DATE of Service: February 6, 2017

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.

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.