

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1000

Reversed
Eligible

PROCEDURAL HISTORY: On June 30, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not eligible to receive benefits from June 4 through June 10, 2017 because she failed to attend a Reemployment and Eligibility Reassessment (REA) appointment as directed. Claimant filed a timely request for hearing. On August 1, 2017, ALJ Seideman conducted a hearing, and on August 2, 2017 issued Hearing Decision 17-UI-89405, concluding claimant was not eligible for benefits from June 4, 2016 through July 1, 2017 because she failed to attend a REA2 as directed. On August 18, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

EVIDENTIARY MATTER: With her application for review, claimant submitted a copy of her “Customer Profile” showing the date she showed her driver’s license to the Department to complete the welcome process. The date this occurred was otherwise not clear in the audio record. Claimant’s submission of this document with her application for review is construed as a request for EAB to consider information not received into the hearing record. Under OAR 471-041-0090(1) (October 29, 2016), information offered, but not received into the hearing record, may be received into evidence as necessary to complete the record. The date claimant showed her license to the Department is necessary to complete the record, and EAB therefore considered the “Customer Profile,” which we presume was originally provided to claimant by the Department, when reaching this decision. Claimant’s “Customer Profile” has been marked as EAB Exhibit 1, and a copy of EAB Exhibit 1 is included with this decision. Any party that objects to the admission of EAB Exhibit 1 must submit its objection in writing to EAB within 10 days of the date on which this decision was mailed. If no objection is received, or an objection is received and overruled, EAB Exhibit 1 will remain part of the record. We also considered the remainder of claimant’s argument, to the extent it was based on the record and was not new information.

FINDINGS OF FACT: (1) Claimant filed claims for benefits for the weeks of June 4, 2017 through July 1, 2017 (weeks 23-17 through 26-17), the weeks at issue.

(2) On May 31, 2017, the Department sent claimant a letter to inform her that it had selected her to attend a REA2 interview at her local WorkSource office. The letter stated that the Department required claimant to complete the REA2 interview no later than June 9, 2017 to remain eligible for benefits. Claimant had experienced problems with her mail, shared the mailbox with her mother, and did not have a key for the mailbox. She did not receive the May 31, 2017 letter from the Department.

(3) On June 5, 2017, claimant went to a WorkSource office to show the Department her driver's license and validate her date of birth to complete the Department's "welcome process." At that time, claimant asked if anything else was pending regarding her claim. The Department representative told claimant that she had nothing else to complete, and did not inform claimant that she was required to complete the REA2 interview. EAB Exhibit 1, Audio Record at ~ 21:23 to 21:48.

(4) Because claimant did not receive the May 31 letter from the Department and had no other notice of the need to complete the REA2 by June 9, she did not complete an REA2 interview by that date.

(5) On June 28, 2017, claimant received two letters from the Department stating that she did not receive benefits for weeks 23-17 and 24-17 because she had not yet completed the REA2 welcome process.

(6) On June 28, 2017, claimant contacted the Department and was advised that she needed to complete a REA2 appointment, and that she would be denied benefits until she completed the appointment.

(7) On June 30, 2017, claimant attempted to go to a WorkSource office, but her vehicle had a mechanical failure on the freeway while claimant was driving to the office. Claimant was unable to go to a WorkSource office that day. Claimant called the WorkSource office and told them she was unable to report to the office that day due to her vehicle malfunction.

(8) On July 6, 2017 (week 27-17), claimant completed a REA2 appointment.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude claimant was eligible to receive benefits from June 4, 2017 through July 1, 2017 because it would have been oppressive to require claimant to complete an REA2 during those weeks.

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 complete an REA2 interview 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).

Claimant did not receive the Department's May 31, 2017 letter directing her to complete a REA2 interview by June 9, 2017. Although documents sent through the U.S. Postal Service are presumed received by the addressee, the record here provides evidence to the contrary. *See* OAR 137-003-

0520(10). Claimant had experienced problems with her mail, shared the mailbox with her mother, and did not have a key for the mailbox. Claimant thus overcame the presumption that she received the Department's May 31 letter stating the REA2 requirement and deadline, and we find that she did not receive it.

On June 5, 2017, a Department representative told claimant that the Department had all the information it required for her claim, and did not inform claimant that she was required to complete the REA2 interview. Claimant therefore did not know, and had no reason to know, the Department needed additional information from her until she received the Department's June 20 and June 27 letters on June 28, 2017. We conclude that it would be oppressive to require claimant to complete a REA2 when she did not receive notice to do so until June 28. Thus, claimant is eligible to receive benefits for weeks 23-17 through 25-17.

Claimant contacted the Department on June 28 and, two days later, during week 26-17, made a good faith effort to attend a REA2 interview, but was unable to do so because her vehicle broke down. Claimant completed her REA2 interview the subsequent week (week 27-17). We conclude it would be oppressive to require claimant to complete her REA2 within two days of receiving notice to do so, especially considering her transportation challenges. Claimant is therefore eligible for benefits for week 26-17, in addition to weeks 23-17 through 25-17.

DECISION: Hearing Decision 17-UI-89405 is set aside, as outlined above.

J. S. Cromwell and D. P. Hettle.

DATE of Service: September 12, 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.

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