

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0582

Affirmed
Ineligible

PROCEDURAL HISTORY: On April 12, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was ineligible for benefits because he failed to provide requested information related to the processing of his claim in violation of Department rules (decision # 101950). Claimant filed a timely request for hearing. On May 16, 2018, ALJ Seideman conducted a hearing, and on May 21, 2018, issued Order No. 18-UI-109798, affirming the Department's decision. On June 5, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On May 11, 2017, claimant filed an initial claim for unemployment insurance benefits, effective May 7, 2017 (BYE 18-18). That claim expired on May 5, 2018.

(2) On June 1, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 72908).

(3) On June 5, 2017, the Department selected claimant's claim for a random quality control audit based on the issuance of decision # 72908 and mailed to claimant a two-page quality control questionnaire. The questionnaire notified claimant that completion of the questionnaire was mandatory under U.S. Department of Labor regulations and that the completed questionnaire was due by June 23, 2017.

(4) On June 23, 2017, claimant became incarcerated without having completed the questionnaire. On July 6, 2017, the Department re-mailed to claimant the questionnaire, notified him that completion of the questionnaire was mandatory, and that if he did not complete the questionnaire as required a stop would be placed on his claim and he would become ineligible for benefits for that reason.

(5) Claimant again failed to complete the questionnaire, and on July 17, 2017, a Department investigator attempted to contact claimant by phone, without success, concerning the questionnaire and was unable to leave a voicemail because a voicemail option had not been made available.

(6) On March 26, 2018, claimant was released from incarceration. That day, he contacted the Department, reopened his claim and filed a late request for hearing on decision # 72908. The Department representative advised claimant that a stop had been placed on his claim because he had failed to complete and return the quality control questionnaire mailed on June 5 and July 6, 2017. The Department representative obtained a new address for claimant and mailed to him another quality control questionnaire for him to complete and return. The cover letter notified claimant that he could provide the requested information by phone. Claimant received the new questionnaire, completed it and mailed it on April 7, 2018. However, his mailing was returned for insufficient postage. He put more postage on it and re-mailed it, but Department records show that it was never received.

(7) On April 12, 2018, the Department issued to claimant decision # 101950, an ongoing denial of benefits, because it had not received the completed quality control questionnaire as requested and required.

(8) Claimant filed, but was not paid, weekly claims for benefits for the weeks including March 25 through May 5, 2018 (weeks 13-18 through 18-18), the weeks at issue.

CONCLUSIONS AND REASONS: We agree with the Department and ALJ. Claimant is ineligible for benefits for the weeks at issue because he did not provide the information the Department requested in the quality control questionnaire in violation of Department rules.

ORS 657.155(1)(b) requires that, to be eligible for unemployment insurance benefits, an unemployed individual must make a claim for benefits in accordance with ORS 657.260. ORS 657.260 provides that “[c]laims for benefits shall be filed in accordance with such regulations as the Director of the Employment Department may prescribe.” OAR 471-030-0025 (January 11, 2018) states, in relevant part:

471-030-0025

Claimant’s Responsibilities

(1) With all claims, an individual shall furnish the Director with their social security number and information pertaining 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. ...

(2) The claimant is required to furnish such information required for processing their claim within the time frame provided by the Director or an authorized representative of the Employment Department. Unless the time frame is otherwise defined under Employment Department statute or rule, or is specifically directed otherwise by an authorized representative of the Employment Department, the claimant is required to respond to all requests for information within the following time frames:

(a) For requests for information by letter mailed to the address of record, the claimant shall have five (5) calendar days to respond from the date the letter was mailed. When responding by mail, the date of the response shall be the date of the postmark affixed by the United States Postal Service. In the absence of a

postmarked date, the date of the response shall be the most probable date of mailing as determined by the Employment Department...

At hearing, claimant asserted that he received the questionnaire in question on March 29, 2018, after which he completed it and mailed it back to the Department on April 7, 2018. However he admitted that his mailing was returned to him for insufficient postage. Although, claimant asserted that he placed additional postage on his mailing and re-mailed it, the Department's witness asserted that it never received a completed questionnaire, and as a result, decision # 101950 was issued. Audio Record ~ 15:30 to 17:00. Viewed objectively, the parties' evidence on the issue differs and there is no reason in the record to find that one party is more credible than the other as to whether or not the Department ever received the questionnaire at issue before claim BYE 18-18 expired on May 5, 2018. However, where, as here, the Department did not pay claimant benefits before issuing its denial, claimant had the burden to establish that Department issued its denial in error. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976). Because the evidence on this disputed issue is no more than evenly balanced, the uncertainty must be resolved in the Department's favor because claimant had the burden of proof. Accordingly, claimant failed to establish by a preponderance of evidence that he returned a completed quality control questionnaire to the Department as required.

Claimant did not provide the Department with the quality control information it requested in violation of Department rules and U.S. Department of Labor regulations. Accordingly, for that reason¹, claimant is ineligible for benefits for the weeks at issue.

DECISION: Order No. 18-UI-109798 is affirmed.

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

DATE of Service: July 6, 2018

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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¹ Claimant also was disqualified from receiving benefits based on decision # 72908. That decision became final on June 22, 2018, when 2018-EAB-0404 became final without an appeal being filed.