

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0679

Affirmed
Ineligible

PROCEDURAL HISTORY: On April 17, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was ineligible for benefits from April 1 through 14, 2018 and subsequent weeks because she was unavailable for work (decision # 134202). On April 30, 2018, claimant filed a timely request for hearing on that decision. On May 11, 2018, the Department served notice of an administrative decision concluding that claimant was ineligible for benefits from April 22 through 28, 2018 and subsequent weeks because she had not completed the Department's registration requirements. On May 23, 2018, ALJ Jarry conducted a hearing on decision # 134202, and on May 24, 2018 issued Order No. 18-UI-110020, reversing that decision and concluding that claimant was not ineligible for benefits from April 1 through May 19, 2018 due to an unavailability for work.¹

On May 31, 2018, claimant filed a timely request for hearing on the Department's decision concluding that she was ineligible for benefits from April 22 through 28, 2018 and subsequent weeks because she had not completed the Department's registration requirements. On June 20, 2018, ALJ S. Lee conducted a hearing on that decision. On June 28, 2018, ALJ S. Lee issued Order No. 18-UI-112301, modifying the Department's decision by concluding that claimant was ineligible for benefits from April 22 through May 12, 2018. On July 3, 2018, claimant filed a timely application for review of Order No. 18-UI-112301 with EAB.

EAB reviewed the entire hearing record and claimant's written argument. In her argument, claimant asked EAB to listen to the audio record of the May 23, 2018 hearing on decision # 134202. Claimant asserted that at that hearing, the Department's representative asked ALJ Jarry whether the Department's registration requirements would be considered, ALJ Jarry said, no, and asked claimant and the Department's representative if that was okay, and they agreed it was. Claimant further asserted, in

¹ On June 13, 2018, Order No. 18-UI-110020 became final without the Department having filed an application for review of that order with the Employment Appeals Board (EAB).

essence, that because ALJ Jarry concluded that she was eligible for benefits from April 22 through May 12, 2018, ALJ S. Lee was precluded from, and therefore erred in, concluding that she was not.

However, the only issue before ALJ Jarry at the hearing on decision # 134202 was whether claimant was ineligible for benefits from April 1 through 14, 2018 and subsequent weeks because she was unavailable for work. Claimant's argument shows that ALJ Jarry indicated, with the parties' agreement, that she would not be conducting a hearing on the Department's decision that claimant also was ineligible for benefits because she had not completed the Department's registration requirements. ALJ Jarry's order addressed only whether claimant was ineligible for benefits from April 1 through May 19, 2018 due to an unavailability for work. It did not address whether claimant was ineligible for benefits from April 22 through May 12, 2018 because she had not completed the Department's registration requirements. ALJ S. Lee therefore was not precluded from, and did not err in, concluding that claimant was ineligible for benefits for those weeks, for that reason.

Alternatively, claimant argued that she had, in fact, completed the Department's registration requirements prior to the date stated in ALJ S. Lee's order. However, that argument was based on new information that claimant did not offer into evidence at the hearing. Such information may only be considered when the party offering the information shows that factors or circumstances beyond the party's reasonable control prevent the party from offering the information into evidence at the hearing. OAR 471-040-0090(2)(b) (October 29, 2006). Here, claimant failed to make such a showing, and EAB therefore did not consider her new information when reaching this decision.

On *de novo* review of the entire hearing record and pursuant to ORS 657.275(2), the Order under review is **adopted**.

DECISION: Order No. 18-UI-112301 is affirmed.

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

DATE of Service: July 27, 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.

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.