

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0932**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On July 24, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not file a claim in accordance with the Department's regulations and therefore was not eligible to receive benefits for the week of July 8 through July 14, 2018 (week 28-18) and until she provided certain requested information. Claimant filed a timely request for hearing. On September 5, 2018, ALJ Snyder conducted a hearing, and on September 7, 2018 issued Order No. 18-UI-116255, concluding that claimant was not eligible to receive benefits for the weeks including July 15 through July 28, 2018 (weeks 28-18 and 29-18).<sup>1</sup> On September 24, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

With her application for review, claimant submitted a written argument. However, she failed to certify that she provided a copy of her argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Claimant's argument also contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). For these reasons, EAB did not consider claimant's argument or any information not received into evidence at the hearing when reaching this decision.

However, because this case is being remanded to the Office of Administrative Hearings (OAH) for further proceedings, each party may send new information to OAH and the other party and offer the new information into the record at the hearing on remand, in accordance with instructions OAH will send the parties in the notice scheduling the remand hearing. At that time, the ALJ will decide if the new information is relevant and material to the issues on remand and, if so, will admit it into the record with each party having the opportunity to respond to the new information. Any party wishing to submit information for consideration by the ALJ at the remand hearing should submit the information in accordance with the instructions that will be included in the notice of hearing, and should contact OAH

<sup>1</sup> The ALJ misidentified the weeks at issue by stating "Claimant is not eligible to receive benefits for the period beginning July 15, 2018 through July 28, 2018, weeks 28-18 and 29-18..." Although she correctly identified the weeks at issue as weeks 28-18 and 29-18, those weeks concern the period July 8, 2018 through July 21, 2018.

for further information. Any information submitted that does not comply with OAH's rules and instructions may not be considered.

**CONCLUSIONS AND REASONS:** Order No. 18-UI-116255 is reversed, and this matter remanded for further development of the record.

ORS 657.155(1)(b) requires that, to be eligible for unemployment benefits or waiting week credit, an unemployed individual must make a claim for benefits in accordance with ORS 657.260. ORS 657.260(1) provides that claims for benefits shall be filed in accordance with the Department's regulations, and ORS 657.260(4) provides that every person making a claim shall certify that during the week for which benefits are claimed the individual has not earned or received compensation for any employment other than as specified in the claim. OAR 471-030-0025(1) (January 11, 2018) provides that a person who has claimed benefits must furnish to the Department all information required for processing their claim including, among things, information with respect to work activity during the week claimed or any other factors material to a determination of eligibility for benefits. A person is required to furnish information required for the processing of their claim within the time frame provided by an authorized representative of the Department, and unless a different time is specified, within five calendar days of the date of a letter requesting that information. OAR 471-030-0025(2)(a).

On March 31, 2018, claimant filed an initial claim for unemployment insurance benefits. Thereafter, when filing her weekly claims for benefits, claimant typically reported some hours worked and wages earned from her employer, Oregon Health Sciences University (OHSU). However, for the week of June 10 through 16, 2018 (week 24-18), claimant failed to report any work or earnings. On June 21, 2018, the Department mailed a letter to claimant asking her to complete and return an enclosed questionnaire or contact the Department to explain why she had reported no work or earnings for week 24-18, and notifying claimant that if she did not do either within five business days benefits would be denied until the information was provided. Exhibit 1. On June 26, 2018, claimant contacted the Department and provided the requested information.<sup>2</sup>

For the week of June 17 through June 23, 2018 (week 25-18), claimant claimed benefits without reporting any work or earnings from the employer. On June 29, 2018, the Department allegedly mailed a letter to claimant asking her to complete and return an enclosed questionnaire or contact the Department to explain why she had reported no hours or earnings for week 25-18, and notifying her that if she did not do either within five business days benefits would be denied until the information was provided. The Department was not contacted by claimant within five business days. On July 24, 2018, the Department issued a denial of claimant's claim for benefits for the week of July 8 through July 14, 2018 (week 28-18) because claimant had not responded to a previous request for information. Exhibit 1. On July 27, 2018, the Department issued a denial of claimant's claim for benefits for the week including July 8 through July 14, 2018 (week 29-18) for the same reason. On July 27, 2018, after claimant received the July 24 benefit denial, she contacted the Department and spoke to a representative. Although claimant apparently provided the necessary information, the Department's policy is to not reverse benefit denials

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<sup>2</sup> We take notice of this fact, 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.

based on a failure to provide information, but to end the denial the week prior to the week in which the information was received. Accordingly, the Department's benefits denials for weeks 28-18 and 29-18 remained, but it ended its denial of benefits effective the week of July 22 through 28, 2018 (week 30-18).

In Order No. 18-UI-116255, the ALJ concluded that claimant was ineligible for the weeks at issue reasoning,

At hearing, claimant testified that she had received a variety of letters from the Employment Department, and believed that she had provided the information when required. Claimant was confused as to the specific information requested in the letter mailed June 29, 2018 and did not realize that she had not provided the required information until she contacted the Department on July 27, 2018.

Order No. 18-UI-116255 at 2-3. However, at hearing, claimant essentially denied that she ever received a June 29 letter and Department records show only that a school questionnaire was sent to the employer that day.<sup>3</sup> Audio Record ~19:00 to 22:00. The Department did not offer a copy of the June 29 letter into evidence and, at hearing, the ALJ did not ask to what address the letter was reportedly sent or if Department records show that the letter was ever returned. Given that Exhibit 1 shows that a 5-day letter like the one described by the Department's witness was sent to claimant on June 21 and that claimant responded to that letter on June 26, the ALJ should have inquired of the Department's witness if the July 24, 2018 denial was mistakenly based on the June 21 request for information that was satisfied on June 26. If not, at the remand hearing, the Department should offer into evidence a copy of the June 29 letter and if it does not, the ALJ should inquire regarding the contents of the letter, specifically whether it requests information concerning the week of June 17 through 23, 2018 (week 25-18) as the Department's witness testified. Audio Record ~11:00 to 13:00. The ALJ should also ask claimant to clarify whether her position is that she did not receive the June 29 letter or might have received it and just doesn't remember. If claimant's position is that she did not receive the letter and the record on remand shows that the June 29 letter was mailed and addressed to her correctly, the ALJ should further inquire of claimant if she had any mail delivery or mail receipt problems around June 29, 2018.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because the ALJ failed to develop the record necessary for a determination of whether claimant failed to furnish information required for the processing of her benefit claim for the week of June 17 through 23, 2018 (week 25-18), within the time frame provided by an authorized representative of the Department, Order No. 18-UI-116255 is reversed, and this matter is remanded for development of the record.

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<sup>3</sup> We take notice of this fact, 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.

**DECISION:** Order No. 18-UI-116255 is set aside, and this matter remanded for further proceedings consistent with this order.<sup>4</sup>

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

**DATE of Service: October 31, 2018**

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<sup>4</sup> **NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 18-UI-116255 or return this matter to EAB. Only a timely application for review of the subsequent Order will cause this matter to return to EAB.