

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-1126

Reversed
No Disqualification

PROCEDURAL HISTORY: On October 15, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision denying unemployment insurance benefits for the period from September 30 through October 6, 2018 (week 40-18) because claimant did not provide the Department with information the Department requested to process his claim. Claimant filed a timely request for hearing. On November 15, 2018, ALJ Frank conducted a hearing, and on November 16, 2018, issued Order No. 18-UI-119907, modifying Order No. 18-UI-119907 to deny benefits from September 30 through October 20, 2018 (weeks 40-18 through 42-18) because claimant did not provide the Department with information the Department requested to process his claim. On December 6, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

We considered claimant's written argument to the extent it was based on the record.

FINDINGS OF FACT: (1) On July 6, 2018, claimant filed an initial claim for unemployment compensation benefits. Claimant claimed benefits for the week ending September 8, 2018 (week 36-18). Claimant reported earnings for week 36-18 when he claimed that week.

(2) On Friday, September 21, 2018, claimant claimed benefits for the week ending September 15, 2018 (week 37-18). Claimant reported no earnings for week 37-18. Sometime after claimant claimed week 37-18, the Department suspended claimant's claim until it received additional information about why claimant stopped reporting earnings in week 37-18.

(3) The Department generally sends a letter requesting information regarding why a claimant has stopped reporting earnings once it processes a weekly claim where the claimant stops reporting earnings after having previously claimed weeks with reported earnings. The Department generally mails such a letter the next business day after a claimant claims a week with no earnings, and requires the claimant to provide the Department the requested information within five days of the date the letter was mailed.

(4) Claimant checked his mail once a week during September and October 2018 and did not receive a letter from the Department requesting information about why he reported no earnings for week 37-18.

The Department did not request information from claimant regarding week 37-18 by telephone message, fax, email, or other electronic means.

(5) Claimant claimed benefits for the period from September 30 through October 20, 2018 (weeks 40-18 through 42-18), the weeks at issue. The Department denied benefits for those weeks because it had not received information from claimant about why he stopped reporting earnings when he claimed week 37-18.

(6) On October 22, 2018, claimant called the Department and spoke with a representative about his claim because he had difficulty claiming week 42-18 online. The Department representative did not tell claimant that the Department had sent a letter to claimant requesting information about week 37-18, or that it required additional information about why claimant reported no earnings for that week.

(7) On October 26, 2018 (during week 43-18), claimant called the Department regarding his claim. The Department representative told claimant the Department needed additional information about week 37-18, and claimant provided information about why he reported no earnings for week 37-18.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude claimant did not fail to provide information requested by the Department to process his claim.

ORS 657.260(1) provides that claims for benefits shall be filed in accordance with the Department's regulations. 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 but not limited to information pertaining to separations from work, work activity and earnings 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).

In Order No. 18-UI-119907, the ALJ found as fact that the Department sent claimant a letter during week 39-18 requesting additional information about why he did not report earnings during week 37-18, and that claimant did not furnish the requested information. Order No. 18-UI-119907 at 1-2. Because of claimant's failure to furnish the information during the weeks at issue, the ALJ concluded claimant was not eligible to receive benefits for those weeks, asserting that, "at hearing, claimant did not directly challenge the Employment Department's conclusion that he had failed to file his claim in accordance with the Department's rules" because he failed to provide information during the weeks at issue. *Id.* at 2. We disagree.

It was undisputed at hearing that claimant did not provide information regarding why he reported no earnings for week 37-18 until October 26, 2018 (during week 43-18). However, claimant testified that he did not receive a letter from the Department on or around September 24, 2018 requesting information to process his unemployment insurance benefits claim, and was not aware that there was any "issue" with his claim until October 26, 2018. Audio Record at 12:04 to 12:16, 13:53 to 14:02. Therefore, claimant did directly challenge the Department's assertion that it sent claimant a letter on or around September 24, 2018 requesting additional information regarding week 37-18, to be provided within five days of the September 24 letter.

Documents sent through the U.S. Postal Service are presumed received by the addressee, absent evidence to the contrary. OAR 137-003-0520(10)(January 31, 2012). However, the preponderance of the evidence does not show that the Department mailed claimant a letter requesting additional information about week 37-18, or if it did, when it mailed the letter. We find claimant's firsthand testimony that he checked his mail and did not receive the September 24 letter that the Department generally mails to claimants who stop reporting earnings outweighs the Department's presumptive evidence that it did send claimant such a letter during week 39-18. The Department witness testified that a letter requesting information about week 37-18 "was sent out in the mail," and that it "*would have been mailed* on the 25th of September [2018]," and that "it had a due date of October 8, 2018." Audio Record 5:27 to 5:38, 6:36 to 6:54 (emphasis added). However, the Department witness changed his testimony and stated that the letter "*would have been* in the mail on September 24 [and] "*would have been due back*" on September 28, 2018. Audio Record at 7:58 to 8:22 (emphasis added). The witness also testified that the information could have been due on October 1, 2018. Audio Record at 9:19 to 10:20. The Department's witness was not able to review the actual letter mailed to claimant, but was extrapolating from the Department's records that a letter was sent to claimant. Audio Record at 8:31 to 9:08. Moreover, when claimant contacted the Department on October 22 to ask about his claim, the Department representative who spoke with claimant did not tell him that the Department had requested additional information from claimant, further undermining the Department's assertion that it sent claimant a request for information before that time. Absent evidence at least as persuasive as claimant's firsthand testimony that he did not receive a letter requesting information for week 37-18, the record shows that claimant had no reason to know the Department needed additional information to process his claim until October 26, when a representative discussed the issue with claimant by telephone. Thus, the record fails to show that claimant failed to provide information requested by the Department during weeks 40-18 through 42-18 and he is eligible to receive benefits for those weeks.

DECISION: Order No. 18-UI-119907 is set aside, as outlined above.

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

DATE of Service: January 7, 2019

NOTE: This decision reverses an order that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.

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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Understanding Your Employment Appeals Board Decision

English

Attention – This decision affects your unemployment benefits. If you do not understand this decision, contact the Employment Appeals Board immediately. If you do not agree with this decision, you may file a Petition for Judicial Review with the Oregon Court of Appeals following the instructions written at the end of the decision.

Simplified Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

Traditional Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

Tagalog

Paalala – Nakakaapekto ang desisyong ito sa iyong mga benepisyo sa pagkawala ng trabaho. Kung hindi mo naiintindihan ang desisyong ito, makipag-ugnayan kaagad sa Lupon ng mga Apela sa Trabaho (Employment Appeals Board). Kung hindi ka sumasang-ayon sa desisyong ito, maaari kang maghain ng isang Petisyon sa Pagsusuri ng Hukuman (Petition for Judicial Review) sa Hukuman sa Paghahabol (Court of Appeals) ng Oregon na sinusunod ang mga tagubilin na nakasulat sa dulo ng desisyong ito.

Vietnamese

Chú ý - Quyết định này ảnh hưởng đến trợ cấp thất nghiệp của quý vị. Nếu quý vị không hiểu quyết định này, hãy liên lạc với Ban Kháng Cáo Việc Làm ngay lập tức. Nếu quý vị không đồng ý với quyết định này, quý vị có thể nộp Đơn Xin Tái Xét Tư Pháp với Tòa Kháng Cáo Oregon theo các hướng dẫn được viết ra ở cuối quyết định này.

Spanish

Atención – Esta decisión afecta sus beneficios de desempleo. Si no entiende esta decisión, comuníquese inmediatamente con la Junta de Apelaciones de Asuntos Laborales. Si no está de acuerdo con esta decisión, puede presentar una Petición de Revisión Judicial ante el Tribunal de Apelaciones de Oregon siguiendo las instrucciones escritas al final de la decisión.

Russian

Внимание – Данное решение влияет на ваше пособие по безработице. Если решение Вам непонятно – немедленно обратитесь в Апелляционный Комитет по Трудоустройству. Если Вы не согласны с принятым решением, вы можете подать Ходатайство о Пересмотре Судебного Решения в Апелляционный Суд штата Орегон, следуя инструкциям, описанным в конце решения.

Khmer

ចំណុចសំខាន់ – សេចក្តីសម្រេចនេះមានផលប៉ះពាល់ដល់អត្ថប្រយោជន៍គ្មានការងារធ្វើរបស់លោកអ្នក។ ប្រសិនបើលោកអ្នកមិនយល់អំពីសេចក្តីសម្រេចនេះ សូមទាក់ទងគណៈកម្មការឧទ្ធរណ៍ការងារភ្លាមៗ។ ប្រសិនបើលោកអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រេចនេះទេ លោកអ្នកអាចដាក់ពាក្យប្តឹងសុំឲ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

Laotian

ເອົາໃຈໃສ່ – ຄໍາຕັດສິນນີ້ມີຜົນກະທົບຕໍ່ກັບເງິນຊ່ວຍເຫຼືອການຫວ່າງງານຂອງທ່ານ. ຖ້າທ່ານບໍ່ເຂົ້າໃຈຄໍາຕັດສິນນີ້, ກະລຸນາຕິດຕໍ່ຫາຄະນະກຳມະການອຸທອນການຈ້າງງານໃນທັນທີ. ຖ້າທ່ານບໍ່ເຫັນດີນຳຄໍາຕັດສິນນີ້, ທ່ານສາມາດຍື່ນຄໍາຮ້ອງຂໍການທົບທວນຄໍາຕັດສິນນຳສານອຸທອນລັດ Oregon ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

Arabic

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فوراً، و إذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للمراجعة القانونية محكمة الاستئناف بأوريغون و ذلك بإتباع الإرشادات المدرجة أسفل القرار.

Farsi

توجه - این حکم بر مزایای بیکاری شما تاثیر می گذارد. اگر با این تصمیم موافق نیستید، بلافاصله با هیأت فرجام خواهی استخدام تماس بگیرید. اگر از این حکم رضایت ندارید، می‌توانید با استفاده از دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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