

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0275

Reversed & Remanded

Kujdes - Ky vendim ndikon në përfitimet tuaja të papunësisë. Nëse nuk e kuptoni këtë vendim dhe keni nevojë për ndihmë për përkthim, kontaktoni menjëherë Bordin për Apelim të Punësimit.

Attention – This decision affects your unemployment benefits. If you do not understand this decision and need translation assistance, contact the Employment Appeals Board immediately.

PROCEDURAL HISTORY: On January 25, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not register following the rules set by the Department and was disqualified from receiving unemployment insurance benefits for the period from December 30, 2018 through January 5, 2019. Claimant filed a timely request for hearing. On March 7, 2019, ALJ Vaughn conducted a hearing and issued Order No. 19-UI-125954, concluding claimant failed to submit information required by the Department and modifying the denial period to December 30, 2018 through February 2, 2019. On March 15, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On December 17, 2018, claimant spoke with a Department representative. Claimant filed an initial claim with assistance from an Albanian interpreter from the Language Line on the telephone with claimant and the Department representative.

(2) On December 17, 2018, the Department mailed claimant a letter in English, with no Albanian translation, stating that claimant had until January 2, 2019 to complete the Department's welcome process. Claimant did not understand the content of the letter.

(3) On December 27, 2018, a Department representative spoke with claimant with the assistance of an Albanian interpreter and told claimant to how to claim benefits using the weekly claim line.

(4) Claimant did not complete the welcome process by January 2, 2019.

(5) Claimant claimed benefits for the period from December 30, 2018 through February 2, 2019, the weeks at issue (weeks 1-19 through 5-19). The Department denied benefits for the weeks at issue.

(6) On January 12, 23, and 29, 2019, the Department sent claimant letters in English, with no Albanian translation, stating that the Department had not paid claimant benefits because he had not completed the welcome process. Claimant did not understand the content of the letters.

(7) On February 3, 2019, claimant understood he had to complete the welcome process. On February 4, 2019, claimant completed the welcome process.

CONCLUSIONS AND REASONS: Order No. 19-UI-125954 is set aside and this matter is remanded for additional information.

ORS 657.166(1)(a) states that an individual shall only be eligible to receive benefits with respect to any week if “[t]he individual has registered for work at and thereafter has continued to report at an employment office in accordance with” the Department’s rules. OAR 471-030-0025(2) (January 11, 2018) states:

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.

* * *

Department policy provides that it will make efforts to find a qualified bilingual employee, or alternative means such as the Language Line, to assist a customer with limited English proficiency once that customer has been identified as having limited English proficiency. Oregon Employment Department, “Comprehensive Handbook of Unemployment Knowledge,” Chapter 101 (May 29, 2014); *see also* OAR 471-040-0010 (February 10, 2012) (Provides that an individual has good cause for failing to file a timely request for hearing when the individual provides satisfactory evidence that the Department failed to follow its own policies with respect to providing service to a limited English proficient person, including the failure to communicate orally or in writing in a language that could be understood by the limited English proficient person upon gaining knowledge that the person needed or was entitled to such assistance).

The Department was on notice from when claimant filed his initial claim that claimant had limited English proficiency, spoke Albanian, and required an interpreter to understand and communicate with the Department. Regardless, the Department sent claimant letters in English, with no Albanian translation. Claimant also asserted at hearing that when claimant spoke with the Department with the aid

of an Albanian interpreter, the Department did not tell claimant about the welcome process or sufficient detail about the welcome process for claimant to understand the requirements.

The record does not contain sufficient information to determine if the Department adequately notified claimant of his obligation to complete the welcome process when it mailed letters to claimant in English after having notice that claimant did not understand and could not communicate in English. The ALJ should ask the parties questions to determine what the Department did to communicate with claimant in Albanian (or other language he may understand), or to notify claimant in Albanian that interpreter and translation services were available. The ALJ should ask if the Department sent a notice with the letters to claimant advising him to call the Department if he did not understand the letters, and whether that notice was provided in Albanian. The ALJ should ask the parties if the Department representative with whom claimant spoke during the initial claim call told claimant that he could and should call the Department when he received letters from the Department so that the Department could read them to claimant in a language he understood, or if anyone else from the Department did so during subsequent calls. The record shows that claimant contacted the Department during the weeks at issue. The ALJ should ask the parties the reason for each of those calls, and if claimant called the Department because his benefits had been denied. The ALJ should ask the parties what questions claimant asked and what information the Department provided claimant during those calls, and in what language. The intent of this decision is not to constrain the ALJ to asking only questions related to the specified subject matter. Therefore, in addition to asking the questions suggested, the ALJ should ask any follow-up questions he deems necessary or relevant.

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 the Department adequately informed claimant that he was required to complete the welcome process, Order No. 19-UI-125954 is reversed, and this matter is remanded for development of the record.

DECISION: Order No. 19-UI-125954 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: April 17, 2019

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 19-UI-125954 or return this matter to EAB. Only a timely application for review of the subsequent Order will cause this matter to return to EAB.

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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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