

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0354

Reversed & Remanded

PROCEDURAL HISTORY AND FINDINGS OF FACT: On January 23, 2019, the Oregon Employment Department (the Department) served notice of a wage and potential benefit report concluding that claimant's claim was invalid, and he did not qualify for unemployment insurance based upon his wages and hours of work in his base year. The Department served notice of that report on claimant only. Claimant subsequently filed a "Request for Adjustment of Claim Determination."

The Department investigated claimant's request based upon claimant's employment with A+Affordable Moving. On February 6, 2019, the Department mailed notice of a decision to claimant only, which denied claimant's request. The decision stated, "From the information we have available, we cannot establish you were employed by this firm during the period you indicated." On February 9, 2019, claimant filed a timely request for hearing. On February 19, 2019, claimant re-requested a hearing.

On February 20, 2019, the Department referred claimant's request for hearing to the Office of Administrative Hearings (OAH) for a hearing. The Department's referral did not list A+Affordable Moving or any other employer as party to the case.

On March 8, 2019, OAH mailed notice of a hearing scheduled for March 21, 2019 at 1:30 p.m. OAH mailed the notice to claimant, and to A+Affordable Moving at a SE 74th Ave address. On March 21, 2019, ALJ Snyder conducted a hearing, at which no representative from A+Affordable Moving attended. On March 29, 2019, the ALJ issued Order No. 19-UI-127350, setting aside the Department's wage and potential benefit report and claim redetermination denials and concluding that claimant's claim determination did not reflect all of claimant's base year wages and hours. OAH served notice of that decision to claimant, claimant's representative, and A+Affordable Moving at the SE 74th Ave address.

On April 6, 2019, A+Affordable Moving filed a timely application for review of Order No. 19-UI-127350 with the Employment Appeals Board (EAB). With the application for review, the employer stated that the SE 74th Ave address is just where the employer stores cars and is not used “as an address to send or receive mail.” The employer provided a mailing address on SE 42nd Ave instead.

CONCLUSIONS AND REASONS: This matter is set aside and remanded for further proceedings.

This matter is before EAB on A+Affordable Moving’s application for review, in which A+Affordable Moving requested that this matter be reopened. That request is construed as a request for EAB to consider additional information under OAR 471-041-0090(2), which allows EAB to consider new information only if it is relevant and material to EAB’s determination, and factors or circumstances beyond the party’s reasonable control prevented the party from offering the information into the hearing record. In support of its request, A+Affordable Moving argued that notice of the hearing in this case was sent to “my shop where I store cars and do not use as an address to send or receive mail,” and that the notice was only received because that property’s owner “brought me all of this paperwork after the hearing had already commenced.”

The failure of an agency to provide notice of a scheduled hearing to a party at its address of record is, under most if not all circumstances, grounds for remand. In reviewing the documents in this case to determine whether OAH mailed notice of the hearing to A+Affordable Moving at its address of record, however, an anomaly appeared that calls into question whether or not A+Affordable Moving is, or should be considered, an “employer” that is a “party” to this matter, and whether A+Affordable Moving was ever entitled to receive notice of the March 21st hearing or the resultant order in the first place.

Under Oregon law, not every employer is entitled to notice of Employment Department action in unemployment insurance cases. *See e.g.* ORS 657.265 (specifying the circumstances under which the Department must notify recent employers of a claimant’s initial or additional claim); ORS 657.266(2) and (3) (specifying that the Department must only provide notice of initial and amended determinations to employers that have paid wages to the claimant during the base year, or are affected by an amended determination). *See also* ORS 657.267; ORS 657.268.

In this case, neither the wage and potential benefits report nor the denial of claimant’s redetermination request suggested that A+Affordable Moving paid wages to claimant in his base year. Given that the Department denied claimant’s request for redetermination, it does not appear that A+Affordable Moving was affected by any amended determination in effect at the time this hearing was scheduled.¹ It therefore appears that A+Affordable Moving might not have been entitled under Oregon law to any notice of the March 21st hearing.

The record documents in this case further suggest that the Department did not intend for A+Affordable Moving to receive notice of the Department’s actions regarding claimant’s claim for benefits, or of the March 21st hearing – specifically, the Department did not serve notice of the January 23rd wage and potential benefit report to A+Affordable Moving. Nor did the Department serve notice of the February

¹ If the ALJ affirms, adopts, or adheres to the substance of Order No. 19-UI-127350 on remand, A+Affordable Moving’s status as an employer entitled to notice under ORS 657.266 might change as a result of that order’s outcome. This decision is confined to the issue of whether A+Affordable Moving was entitled to notice of the March 21st hearing and the decision that resulted from that hearing.

6th decision denying claimant's request for redetermination to A+Affordable Moving. Nor did the hearing referral the Department sent to OAH list A+Affordable Moving or any other employer as being party to this case.

If that is the case, and A+Affordable Moving was not entitled under Oregon law to notice of the March 21st hearing in this case, or the ALJ's decision which followed that hearing, then any error in mailing notice of the March 21st hearing to the wrong address was harmless. If A+Affordable Moving was, however, entitled to notice, then an inquiry into whether it received the notice it was due under the law is required. This matter therefore presents two interrelated issues for remand:

- (1) Was A+Affordable Moving an "employer" entitled under ORS 657.266 to notice of the March 21st hearing in this matter?
- (2) If so, did OAH mail notice of the March 21st hearing to A+Affordable Moving at its address of record with the Department as required by OAR 471-040-0015(1)?

There being no evidence in this record capable of resolving those issues or reaching a determination in the case as it has been presented to EAB, this matter is remanded to OAH for a hearing to resolve those issues, and to redetermine the substance of the case once it is established who is entitled to notice of the hearing in this matter under Oregon law, and all parties to the case are given a reasonable opportunity for a fair hearing as required under ORS 657.270(4)(a).

DECISION: Order No. 19-UI-127350 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 19, 2019

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 19-UI-127350 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 desisyon.

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 ໄດ້ ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

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 بمحكمة 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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