

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0463

Reversed
Eligible - Weeks 12-19 and 13-19

PROCEDURAL HISTORY: On April 1, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision denying claimant unemployment insurance benefits for the week of March 17 through March 23, 2019 (week 12-19) and continuing until claimant provided claims processing information requested by the Department. Claimant filed a timely request for hearing. On May 3, 2019, ALJ Shoemake conducted a hearing, and on May 10, 2019 issued Order No. 19-UI-129686, modifying the Department's decision by denying benefits for the weeks of March 17 through March 30, 2019 (weeks 12-19 and 13-19) because claimant did not provide the Department with the requested information until week 14-19. On May 16, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On December 14, 2018, claimant filed an initial claim for unemployment insurance benefits. The Department determined that claimant had a valid claim for benefits and that his weekly benefit amount was \$247.

(2) Claimant filed a claim for benefits for the week of January 13 through January 19, 2019 (week 03-19). When he filed that claim, claimant reported earnings for week 03-19. Shortly thereafter, claimant filed a claim for benefits for the week of January 20 through January 26, 2019 (week 04-19). When he filed that claim, claimant reported no earnings for week 04-19.

(3) After claimant filed his claim for week 04-19, the Department sent claimant a letter requesting information by a certain date about why he stopped reporting earnings after having previously claimed a week with reported earnings. The letter warned claimant that if he did not provide the requested information by the deadline given, his benefits would be stopped until the information was provided. On February 8, 2019, within the time frame set by the Department, claimant responded to the letter by contacting the Department and providing the requested information.

(4) Claimant filed a claim for benefits for the week of February 17 through February 23, 2019 (week 08-19). When he filed that claim, claimant reported earnings for week 08-19. Shortly thereafter, claimant filed a claim for benefits for the week including February 24 through March 2, 2019 (week 09-19).

When he filed that claim, claimant reported no earnings for week 09-19. After filing his claim for week 09-19, Department records show that the Department sent claimant a letter, dated March 12, 2019, requesting information within five days about why he stopped reporting earnings after having previously claimed a week with reported earnings. The letter reportedly warned claimant that if he did not provide the requested information by the deadline given, his benefits would be discontinued until the information was provided.

(5) Claimant did not receive the March 12th letter and did not provide the requested information by the deadline contained therein. The Department did not request the information from claimant regarding week 09-19 by telephone message, fax, email or other electronic means. In March 2019, claimant's household experienced difficulties in receiving mail addressed to the household address. Specifically, a roommate did not receive several letters reportedly mailed to her at that address by a governmental housing agency.

(6) Claimant claimed benefits for the weeks of March 17 through March 30, 2019 (weeks 12-19 and 13-19) the weeks at issue. The Department denied claimant benefits for those weeks because it had not yet received information from claimant about why he stopped reporting earnings when he claimed benefits for week 09-19.

(7) On April 2, 2019, claimant contacted the Department and inquired about why he had not received benefits for week 12-19. The Department representative told claimant the Department needed additional information about week 09-19, and claimant provided the necessary information about why he reported no earnings for week 09-19.

CONCLUSIONS AND REASONS: Claimant is eligible for benefits for weeks 12-19 and 13-19.

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).

Order No. 19-UI-129686 found as fact that the Department sent claimant a letter on March 12, 2019 requesting additional information about why he did not report earnings during week 09-19, claimant had not had any issue with his mail delivery, and claimant did not furnish the requested information until April 2, 2019. Order No. 19-UI-129686 at 1-2. The order then concluded that claimant was not eligible to receive benefits for weeks 12-19 and 13-19, reasoning that, "The claimant testified that he did not receive [the letter]; however he has had no problems with his mail delivery... The law presumes that a letter duly directed and mailed was received in the regular course of the mail. ORS 40.135(q)." Order No. 19-UI-129686 at 2. However, the record does not support the order's findings and conclusions.

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 Department failed

to provide evidence regarding the specific address to which the March 12, 2019 letter was reportedly mailed, and claimant testified that he never received the letter and that around that time his household had experienced difficulties in receiving mail addressed to the household address. Audio Record ~ 13:00 to 13:40. Moreover, claimant promptly responded to a previous letter from the Department regarding the same information regarding week 04-19, meaning that he likely would have responded promptly to the March 12th letter requesting the same information regarding week 09-19 if he had received the letter. Absent evidence that claimant was not a credible witness, his first hand testimony and corroborating circumstantial evidence that he did not receive the March 12th letter regarding week 09-19 are sufficient to overcome even a presumption that he did.

Accordingly, the record as a whole shows that claimant had no reason to know the Department needed additional information to process his claim until April 2, 2019, when a representative presumably discussed the issue with claimant after claimant contacted the Department for a different reason. In the absence of notice of the Department's expectation that he provide information about his work and earnings during week 09-19, claimant was not required to respond within the time frames set forth in OAR 471-030-0025(2)(a), and therefore is eligible to receive benefits for weeks 12-19 and 13-19.

DECISION: Order No. 19-UI-129686 is set aside, as outlined above.¹

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

DATE of Service: June 19, 2019

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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¹ This decision reverses an order that denied benefits. Please note that payment of benefits, if any are owed, may take approximately a week for the Department to complete.



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 بمحكمة الإستئناف 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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