

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0498

Reversed
Eligible Week 17-19

PROCEDURAL HISTORY: On May 1, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision denying claimant unemployment insurance benefits for the week including April 21 through April 27, 2019 (week 17-19) and continuing until claimant provided claims processing information requested by the Department. Claimant filed a timely request for hearing. On May 22, 2019, ALJ Murdock conducted a hearing, and on May 29, 2019, issued Order No. 19-UI-130753, affirming the Department's decision. On May 31, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On December 13, 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 \$282.¹

(2) Claimant filed a claim for benefits for the week of March 31 through April 6, 2019 (week 14-19), claimant reported earnings for that week. Shortly thereafter, claimant filed a claim for benefits for the week of April 7 through April 13, 2019 (week 15-19). Claimant did not report earnings for week 15-19. The Department reportedly sent claimant a letter dated April 16, 2019 requesting information regarding 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 April 22, 2019, his benefits would be stopped until the information was provided.

(3) Claimant did not receive a letter from the Department's dated April 16, 2019 and did not provide the requested information by April 22, 2019. The Department did not request the information from claimant regarding week 15-19 by telephone message, fax, email or other electronic means.

¹ 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.

(4) Claimant claimed benefits for the week of April 21 through April 27, 2019 (week 17-19) the week at issue. The Department denied claimant benefits for that week because it had not yet received information from claimant about why he stopped reporting earnings when he claimed benefits for week 15-19.

(5) On May 3, 2019, claimant contacted the Department and inquired about why he had been denied benefits for week 17-19. The Department representative told claimant the Department needed additional information about week 15-19 and claimant then provided the necessary information about why he reported no earnings for week 15-19.

CONCLUSIONS AND REASONS: Claimant did not fail to timely 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).

Order No. 19-UI-130753 found as fact that the Department mailed claimant a letter on April 16, 2019 requesting additional information about why he did not report earnings during week 15-19 within five days, the letter was not returned to the Department as undeliverable to claimant's post office box of record, and claimant did not furnish the requested information until May 3, 2019. Order No. 19-UI-129686 at 1. The order then concluded that claimant was not eligible to receive benefits for week 17-19, reasoning, "The [April 16] letter was not returned to the Department as undeliverable and ORS 040.135(1)(q) provides that a letter duly directed and mailed is presumed received in the regular course of the mail [and] claimant did not provide the information until May 3, 2019." Order No. 19-UI-129686 at 2. However, on this record, claimant overcame the presumption that he received a letter from the Department dated April 16, 2019.

Documents sent through the U.S. Postal Service are presumed received by the addressee, absent evidence to the contrary. ORS 040.135(1)(q)²; OAR 137-003-0520(10) (January 31, 2012).³ Here, the

² ORS 40.135 provides:

Presumptions. (1) The following are presumptions:

(q) A letter duly directed and mailed was received in the regular course of the mail.

³ OAR 137-003-0520 provides:

Filing and Providing Copies of Documents in Contested Case

Department provided hearsay evidence that it mailed the letter to claimant. Claimant testified first-hand that he never received the letter and there was no dispute that he promptly contacted the Department on May 3, 2019 after he received his benefits denial. Audio Record ~ 5:30 to 6:30. Absent evidence that claimant was not a credible witness, we find that his first hand testimony that he never received an April 16, 2019 letter from the Department outweighs the presumption that he did set forth in OAR 137-003-0520(10).

Accordingly, the record shows that claimant had no reason to know the Department needed additional information to process his claim until May 3, 2019, when a Department representative discussed the issue with claimant by telephone and claimant provided the necessary information. Thus, claimant did not fail to provide information previously requested by the Department during week 17-19 and is eligible to receive benefits for that week.

DECISION: Order No. 19-UI-130753 is set aside, as outlined above.

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

DATE of Service: July 3, 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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10) Documents sent through the U.S. Postal Service by regular mail are presumed to have been received by the addressee, subject to evidence to the contrary.



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.

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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