

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0617

Modified
Eligible Weeks 16-19 and 18-19, Ineligible Week 19-19

PROCEDURAL HISTORY: On May 15, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was ineligible for benefits for the week of April 14 through April 20, 2019, and for the period beginning April 28, 2019 until the reason for the Department's denial ended, because he failed to complete a Reemployment and Eligibility Assessment (REA) in accordance with the Department's requirements (decision # 133039). Claimant filed a timely request for hearing. On June 11, 2019, ALJ S. Lee conducted a hearing, and on June 19, 2019, issued Order No. 19-UI-131888, modifying the Department's decision and concluding claimant was eligible for benefits for the week of April 14 through April 20, 2019, but ineligible for the period of April 28, 2019 through May 11, 2019 because he failed to complete a REA as directed by the Department. On July 3, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument in reaching this decision. Claimant provided additional evidence with his written argument. EAB considered the additional evidence when reaching this decision under OAR 471-041-0090(1)(a) (May 13, 2019) (allowing EAB to receive additional evidence into the record if necessary to complete the record). The additional evidence consists of three letters from the Department to claimant dated April 2, 2019, April 30, 2019, and May 1, 2019, that have been marked as EAB Exhibit 1, and a copy is being provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 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(2). Unless such objection is received and sustained, the exhibit will remain in the record.

FINDINGS OF FACT: (1) On February 20, 2019, claimant filed an initial claim for unemployment insurance benefits. Claimant filed claims for benefits for the weeks of April 14 through April 20, 2019 (week 16-19), and the period of April 28, 2019 through May 11, 2019 (weeks 18-19 through 19-19). These are the weeks at issue. The Department denied and did not pay claimant benefits for those weeks.

(2) In March 7, 2019, claimant completed an REA interview with the Department. On April 2, 2019, the Department mailed claimant a letter to his address of record stating that the Department required him to

complete a second REA interview no later than April 12, 2019, or benefits would be denied until he had completed the REA. EAB Exhibit 1. Claimant did not receive the April 2 letter until the end of May 2019.

(3) Claimant had a “shared” community mailbox that contained an individual box for his mail. Transcript at 19-20. Claimant sometimes had problems receiving his mail.

(4) On April 30, 2019, May 1, 2019, and May 8, 2019, the Department sent claimant letters stating that claimant failed to attend a REA interview, that claimant must complete the REA interview, and that it would pay no additional benefits until claimant completed the REA interview. EAB Exhibit 1. Claimant received the April 30 and May 1 letters, but did not receive the May 8 letter. Claimant thought he had completed the REA interview requirement and did not understand that the requirement referred to in the April 30 and May 1 letters was for a second REA interview.

(5) On May 9, 2019, a Department adjudicator called and left a message for claimant instructing him to call the Department no later than May 13, 2019, or the Department would make a decision regarding claimant’s benefits based on its available information. On May 9, 2019, claimant called the Department and left a message for the adjudicator. On May 13, 2019, the adjudicator called claimant and left him a message to respond before May 15, 2019.

(6) On May 16, 2019, claimant spoke with the Department adjudicator and she explained the REA requirement to claimant. On May 16, 2019, claimant completed the REA process (during week 20-19).

CONCLUSION AND REASONS: Claimant was eligible for benefits for the weeks from April 14, 2019 through April 20, 2019 (week 16-19), and April 28, 2019 through May 4, 2019 (week 18-19). Claimant was ineligible for benefits for the week of May 5, 2019 through May 11, 2019 (week 19-19) because he failed to attend a REA interview as directed by the Department.

An unemployed individual is eligible for benefits if, among other requirements, the individual has “registered for work at and thereafter has continued to report at an employment office in accordance with such rules as the director may prescribe.” ORS 657.155(1)(a). To satisfy this requirement, when requested by the Department, an individual must submit information to an authorized representative about the individual’s job qualifications, skills, training and experience when the information is deemed necessary to carry out job placement services. OAR 471-030-0035(2) (January 11, 2018). As part of this process, the Department may require individuals to complete a REA interview to assist the Department in assessing a claimant’s work history, job skills and related employment information. However, that requirement may be waived or altered when compliance with the requirement “would be oppressive.” ORS 657.155(1)(a).

The order under review concluded that claimant should be allowed benefits for the week of April 14, 2019 through April 20, 2019 (week 16-19) because his failure to receive the Department’s April 2nd letter meant that he had no notification that he was required to complete a second REA until after that week expired.¹ The record supports that conclusion because although OAR 137-003-0520(10) (January

¹ Order No. 19-UI-131888 at 4.

31, 2012) provides that documents sent through the U.S. Postal Service are presumed received by the addressee, claimant provided unrefuted testimony that he had problems receiving his mail and he more likely did not receive the April 2nd letter. Requiring him to attend the second REA under those circumstances would be oppressive, and claimant is not denied benefits for that week.

The order under review also concluded that claimant should be denied benefits for the week of May 5, 2019 through May 11, 2019 (week 19-19) because by that time he had received notification of the requirement that he complete a second REA, but did not do so until after that week.² The record also supports that conclusion. Claimant admitted receiving the Department's April 30th and May 1st letters, he likely received those letters prior to or at the beginning of week 19-19, and he failed to attend the second REA because he was confused and thought the letters were referring to the first REA, which he had already completed.³ Also during week 19-19, a Department adjudicator called claimant and left him a message to call about his claim. Had claimant spoken with someone at the Department about the reason for the denials, he would more likely than not have been informed that the REA interview requirement on the April 30 and May 1 letters referred to a second REA interview, rather than the one he completed in March 2019. Because claimant was notified of the requirement that he attend a REA interview to maintain his eligibility for benefits, and he did not do so until May 16, 2019 (during week 20-19), claimant's failure to do so rendered him ineligible to receive benefits for the week of May 5 through May 11, 2019 (week 19-19).

However, the order under review also denied benefits for the week of April 28, 2019 through May 4, 2019 (week 18-19) on the basis that claimant "admitted he did receive the letter mailed by the Employment Department on April 30, 2019 which notified him that he was being denied benefits because he had not completed the REA process."⁴ The record does not support that conclusion. Although the Department mailed claimant a letter on April 30th, the record fails to show that claimant received it with enough time to take action on the letter during that week. April 30th was a Tuesday. As previously explained, the U.S. Postal Service takes up to three days to deliver first class mail to addressees, which means that it is just as likely as not that claimant received the letter mailed on Tuesday, August 30th on Friday, May 3rd, which would have left him with little or no time during business hours to contact the Department or attend the second REA during that week. Claimant's receipt of the April 30th letter during week 18-19 therefore did not afford him a reasonable opportunity to attend the second REA session or end the period of ineligibility during that week. It would therefore be oppressive to require claimant to have completed the second REA during week 18-19, and he should not be denied benefits based upon his failure to do so.

In sum, claimant is eligible for benefits for the weeks from April 14 through April 20, 2019 (week 16-19), and April 28, 2019 through May 4, 2019 (week 18-19). Claimant is ineligible for benefits for the week of May 5, 2019 through May 11, 2019 (week 19-19).

² Order No. 19-UI-131888 at 4.

³ Since the record shows that claimant received the April 30th and May 1st letters, it is more likely than not that he received them prior to the week of May 5th because first class mail sent through the U.S. Postal Service is typically delivered within 1-3 days of mailing. EAB has taken notice of this fact, which is a generally cognizable fact. OAR 471-041-0090(1) (May 13, 2019). A copy of the information is available to the parties at <https://www.usps.com/ship/mail-shipping-services.htm>. Any party that objects to our taking notice of this information 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(2). Unless such objection is received and sustained, the noticed fact will remain in the record.

⁴ Order No. 19-UI-131888 at 4.

DECISION: Order No. 19-UI-131888 is modified.

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

DATE of Service: August 7, 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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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 Empleo. Si no está de acuerdo con esta decisión, puede presentar una Aplicación 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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