

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0634

Reversed
Eligible Week 20-19

PROCEDURAL HISTORY: On May 22, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant failed to provide information to the Department and benefits therefore were not payable from May 12, 2019 through May 18, 2019 and until claimant provided the requested information. Claimant filed a timely request for hearing. On June 12, 2019, ALJ Wyatt conducted a hearing, and on June 20, 2019 issued Order No. 19-UI-131976, affirming the Department's decision. On July 8, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument to the extent it was relevant and based upon the record.

FINDINGS OF FACT: (1) On May 7, 2019, the Department mailed a letter to claimant requiring her to provide information within five days about her hours and earnings the week of April 4, 2019 (week 18-19), or her benefits would be denied.

(2) Claimant did not receive the May 7th letter, even though the Department mailed it to her address of record with the Department. Claimant was not aware the Department required that information, and did not provide it within the time period specified by the letter.

(3) Claimant filed a weekly claim for benefits for the week of May 12, 2019 through May 18, 2019 (week 20-19). Because claimant had not responded to the May 7th letter, the Department denied her benefits for that week.

(4) Around May 22, 2019, claimant learned she had been denied benefits and why, and on May 22, 2019 she provided the Department with the requested information. The Department ended the denial at that point, but still denied benefits for week 20-19.

CONCLUSIONS AND REASONS: Claimant is not ineligible for benefits based upon her failure to provide information to the Department.

ORS 657.155(1) provides, in pertinent part, “An unemployed individual shall be eligible to receive benefits with respect to any week only if the Director of the Employment Department finds that: (a) 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. However, the director may, by rule, waive or alter either or both of the requirements of this subsection as to individuals attached to regular jobs and as to such other types of cases or situations with respect to which the director finds that compliance with such requirements would be oppressive, or would be inconsistent with the purposes of this chapter . . .” ORS 657.260(4) provides, “Every person making a claim shall certify that the person has not, during the week with respect to which benefits are claimed, received or earned wages or compensation for any employment, whether subject to this chapter or not, otherwise than as specified in the claim.”

OAR 471-030-0025 states:

(1) With all claims, an individual shall furnish the Director with * * * other information required for processing their claim. Such information may include, but is not limited to, * * * current work activity and earnings * * * entitlement to pay and allowances of various kinds * * *. With respect to work activity or self-employment during any week claimed, the information required may include the type of work activity, the amount of time devoted to such activity, the gross and net amount of compensation, remuneration, wages, commission, salary, or income, if any, received or expected to be received, and any other factors material to a determination of eligibility for benefits.

(2) 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.

* * *

The order under review denied benefits to claimant for failing to respond to the Department’s May 7th letter. The order stated that the letter was mailed to claimant’s correct address of record, and although claimant testified she did not receive the letter, “By Oregon law, documents sent through the U.S. Postal Service are presumed to have been received by the addressee, subject to evidence to the contrary. OAR 137-003-0520(9). A bare assertion of non-receipt, as offered by claimant in this case, is insufficient to overcome the presumption of receipt.” Order No. 19-UI-131976 at 2, fn1.

The record supports the order's conclusion that the May 7th letter was mailed to claimant. Although claimant disputed that the Department mailed the May 7th letter to her, absent evidence to the contrary it is more likely than not that the Department mailed a letter to claimant at her address of record in its ordinary course of business. It is also likely that, as the Department's witness testified, the letter advised claimant she was required to provide the Department with certain information within five days or she would be denied benefits.

However, the record does not support the order's conclusion that the mail-receipt presumption controls the outcome of this case, nor that claimant made only a "bare assertion of non-receipt." Rather, it is more likely than not on this record that claimant never received that letter. According to the record, claimant gets mail at a single-family residence, is the only person who collects the mail, and was not aware of any mail delivery or receipt interruptions with respect to her other mail, all of which makes it more likely than not that claimant was expecting to receive all the mail addressed to her, and that if the letter was delivered to claimant she would have received it. Given claimant's responsiveness in other areas of her claim, it is also more likely than not that if claimant had received a document advising her to do something as a condition of receiving benefits, she would have done it. Claimant therefore established that it is more likely than not she did not receive the May 7th letter.

It would be "oppressive" to require claimant to respond to a letter she never received. Under ORS 657.155(1)(a), claimant therefore cannot be denied benefits for week 20-19.

DECISION: Order No. 19-UI-131976 is set aside, as outlined above.

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

DATE of Service: August 13, 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 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 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 ໄດ້ ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄໍາຕັດສິນນີ້.

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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