

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0923

Modified

Ineligible Weeks 28-19 through 30-19; Eligible Weeks 31-19 through 35-19

PROCEDURAL HISTORY: On August 6, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant did not provide the Department with required Self Employment Assistance (SEA) program data in accordance with Department rules, and was ineligible to receive benefits for the weeks including July 7 through July 27, 2019 (weeks 28-19 through 30-19) and until claimant provided the information necessary to process his claim (decision # 114352). Claimant filed a timely request for hearing. On September 5, 2019, ALJ Frank conducted a hearing, and on September 13, 2019, issued Order No. 19-UI-136450, modifying decision # 114352 by concluding that claimant did not furnish the Department with the information necessary to process his claim in accordance with Department rules and was ineligible to receive benefits for the weeks including July 7 through August 31, 2019 (weeks 28-19 through 35-19). On September 24, 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 on the hearing record.

FINDINGS OF FACT: (1) On October 12, 2018, claimant filed an initial claim for unemployment insurance benefits. Thereafter, claimant claimed and was denied benefits for the period of July 7, 2019 through August 31, 2019 (weeks 28-19 through 35-19), the weeks at issue.

(2) Shortly after filing his initial claim, claimant applied to participate in the Department's SEA program. To obtain approval to participate in the SEA program, the Department required claimant to complete a feasibility questionnaire for his proposed self-employment venture. Claimant prepared a ten-page typed response to the questionnaire that included information such as his business location, its management structure, claimant's qualifications, skills and experience as a business owner, his financial plans for the business and how he intended to achieve them, specific short-term and long-term goals for the business, his trademark plans, targeted customer base and website plans, his start-up events and his plans to address potential risks of failure. He submitted his response to the Department as a "Business Feasibility Worksheet." Exhibit 1 (Business Plan).

(3) On May 23, 2019, the Department notified claimant by email that he was preliminarily approved to participate in the SEA program. The Department also notified claimant that in order to process his claim, it needed to receive within 45 days, or by July 7, 2019, a Federal Employer Identification Number (FEIN) for his business and his “business plan.” Exhibit 1 (May 23, 2019 email).

(4) Claimant believed that his “Business Feasibility Worksheet” was his business plan and did not submit a formal plan designated as such to the Department by July 7, 2019. He also did not submit his FEIN to the Department by the July 7, deadline.

(5) On August 2, 2019, the Department representative claimant had communicated with throughout the SEA application process sent claimant an email requesting his FEIN and his “business plan” and reminded him that the requested data “was due no later than Sunday, July 7, 2019.” Exhibit 1. On August 2, claimant responded by email to the representative. He submitted his FEIN and his “Business Feasibility Worksheet,” which he had modified and renamed “Business Plan.” Exhibit 1. In the email, claimant stated, “Business plan I have resubmitted...but this is the formatted one from you all. I am glad to reformat into another template if that is what is needed.” Exhibit 1. Claimant received no response before August 6, 2019, when the Department representative claimant had communicated with issued decision # 114352 denying claimant benefits for weeks 28-19 through 30-19 and until claimant provided additional information.

(6) Thereafter, the Department representative sent to claimant “The One-Page Business Plan,” which claimant completed by hand and resubmitted to the Department on August 9, 2019. Exhibit 1. Claimant received no other response from the representative. However, his claims for benefits for weeks 31-19 through 35-19 also were denied because the Department representative concluded claimant’s hand-written response was not a “formal business plan,” although the representative had never explained to claimant what standard he had to meet or what format he had to use for an acceptable business plan. Audio Record at 24:30 to 25:00.

CONCLUSIONS AND REASONS: Claimant did not provide the Department with required Self Employment Assistance (SEA) program data in accordance with Department rules and was ineligible to receive benefits for the weeks including July 7 through July 27, 2019 (weeks 28-19 through 30-19). However, claimant provided the Department with the required (SEA) program data by August 2, 2019 and is eligible to receive benefits for the weeks including July 28 through August 31, 2019 (weeks 31-19 through 35-19).

ORS 657.155(1) provides, in relevant part, that an individual shall be eligible to receive benefits with respect to any week only if the individual has claimed benefits for that week in accordance with ORS 657.260. ORS 657.260 provides that claims for benefits shall be filed in accordance with such regulations as the Director of the Department may prescribe. OAR 471-030-0025(1) (January 11, 2018) provides, in relevant part, that an individual shall furnish the Department any information required for the processing of their claim including, but not limited to, information pertaining to prior work history, separations from work, current work activity and earnings and self-employment. A claimant is required to provide the information requested within the timeframe provided by the Department, or if no timeframe is provided, for requests for information by letter mailed to the claimant’s address of record,

the claimant shall have five calendar days to respond from the date the letter was mailed. OAR 471-030-0025(2), (2)(a).

Order No. 19-UI-136450 found that “before and during [the weeks at issue] claimant did not submit to the Employment Department all of the information necessary to process his claim for SEA benefits,” and concluded, for that reason, that claimant was not entitled to benefits for any of the weeks at issue. Order No. 19-UI-136450 at 1-2. However, the record does not support that finding and conclusion.

The Department’s witness admitted that claimant submitted all of the information needed by the Department to process claimant’s SEA claim, but that his submissions were inadequate because they did not include a “formal business plan.” Audio Record at 16:00 to 17:15. He explained that he did not consider the ten-page typed “Business Plan” claimant submitted to the Department on August 2, 2019 acceptable because “in reality” it was claimant’s feasibility study that had been renamed. Audio Record at 23:00 to 24:30. He explained that he did not consider the hand-written “The One-Page Business Plan” claimant completed on the Department’s template and faxed back to the Department on August 9, 2019 acceptable because it was hand-written and therefore not “formal.” Audio Record at 23:00 to 24:30. However, claimant’s ten-page typed “Business Plan” addressed all of the substantive components listed on the Department’s business plan template and more, including his business location, its management structure, claimant’s qualifications, skills and experience as a business owner, his financial plans for the business and how he intended to achieve them, specific short-term and long-term goals for the business, his trademark plans, targeted customer base and website plans, his start-up events and his plans to address potential risks of failure. The fact that it was not submitted in a format that the Department representative personally considered acceptable, or the fact that the representative considered it a feasibility plan that had been renamed and not *both* a feasibility plan and a business plan, even though it contained the same elements as the business plan, is not a reasonable basis on which to deny claimant benefits after his August 2 submissions. On that date, claimant submitted the required FEIN and his ten-page typed “Business Plan” without any instruction or guidance about what format the representative considered acceptable, or feedback that he should have used a different form.

Accordingly, while claimant failed to provide the necessary SEA data requested by the Department between the July 7 deadline and August 2, 2019, and he is therefore is ineligible for benefits for the weeks including July 7 through July 27, 2019 (weeks 28-19 through 30-19), claimant did not fail to provide the SEA data requested by the Department during the weeks thereafter, including July 28 through August 31, 2019 (weeks 31-19 through 35-19), and he is eligible to receive benefits for those weeks.

DECISION: Order No. 19-UI-136450 is modified, as outlined above.

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

DATE of Service: November 1, 2019

NOTE: This decision modifies 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.

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

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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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