

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0142

Reversed
Eligible Week 51-19

PROCEDURAL HISTORY: On December 26, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not file a claim in accordance with the Department's regulations and therefore was not eligible to receive benefits from December 15, 2019 through December 21, 2019 and until he provided certain requested information. Claimant filed a timely request for hearing. On January 22, 2020, ALJ Wyatt conducted a hearing, and on January 24, 2020 issued Order No. 20-UI-143291, affirming the Department's decision. On February 12, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On September 16, 2019, claimant filed an initial claim for unemployment insurance benefits. Thereafter, claimant weekly claims for benefits. When making weekly claims for benefits between September and November 30, 2019, claimant regularly reported hours worked and wages earned.

(2) On December 8, 2019, claimant claimed benefits for the week of December 1, 2019 to December 7, 2019 (week 49-19), but reported no hours worked or earnings.

(3) On December 10, 2019, the Department mailed claimant a letter asking him to complete and return an enclosed questionnaire explaining why he had reported no hours or earnings for week 49-19. The letter stated that if claimant did not return the completed questionnaire or contact an unemployment insurance center within five days of the date of the letter, December 15, 2019, benefits would be denied. Claimant did not receive the December 10, 2019 letter from the Department for unknown reasons. The letter was not returned to the Department as undeliverable by the post office.

(4) On December 24, 2019, the Department processed the administrative decision that was mailed to claimant on December 26, 2019, which denied claimant benefits for the week of December 15, 2019 to December 21, 2019 (week 51-19) because claimant did not return the December 10, 2019 questionnaire.

(5) On December 26, 2019, claimant viewed the week 51-19 benefit denial online and called the Department with the required information.

CONCLUSION AND REASONS: Claimant did not provide the information sought by the Department's December 10, 2019 letter by the December 15, 2019 deadline because he did not receive the December 10, 2019 letter. Claimant furnished the Department the required information immediately after becoming aware of the Department's information request and is eligible to receive benefits for week 51-19.

ORS 657.260(1) provides that claims for benefits shall be filed in accordance with the Department's regulations, and ORS 657.260(4) provides that every person making a claim shall certify that during the week for which benefits are claimed the individual has not earned or received compensation for any employment other than as specified in the claim. 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, among things, information with respect to work activity 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. 20-UI-143291 found as fact that claimant did not furnish the requested information explaining why he failed to report earnings for the week 49-19 within the five days specified in the Department's December 10, 2019 letter, and did not furnish the requested information prior to the Department processing the administrative decision it mailed claimant on December 26, 2019. Because of claimant's late reply to the Department's inquiry, the order concluded that claimant did not file a claim in accordance with the Department's regulations and found him ineligible for benefits for week 51-19. However, Order No. 20-UI-143291 did not give consideration to claimant's explanation that he never received the Department's December 10, 2019 letter. Although the records shows that the Department's letter went to claimant's correct address and was not returned to the Department as undeliverable, claimant credibly explained what could have occurred that resulted in him not receiving the letter.

At the hearing claimant testified that his mailbox is situated a block away from his residence, is unsecured, and aligned next to seven other mailboxes. Audio Recording at 12:50 to 13:37. Based on his mailbox's alignment with other mailboxes and the fact that his mail gets delivered by substitute mail carriers at times, it is probable that claimant's mail is sometimes misplaced by the mail carrier. Claimant supported his belief by testifying that he was always getting his neighbor's mail. Audio Recording 16:20 to 17:30. Claimant also supported his belief by testifying about his history of acting on the mail he has received from the Department in a timely manner since filing his initial claim, which suggests that if claimant had received the letter he likely would have timely responded to it. Audio Recording 13:55 to 14:22. The record shows that on December 26, 2019, claimant became aware of his "claim denied" status online at WorkinginOregon.org via the "Where's my check" tab and immediately called the Department with the requisite information. Given the fact that claimant contacted the Department prior to receiving the administrative decision dated December 26, 2019, and that nothing about his testimony suggested it was less credible than the Department's witness, it is reasonable to conclude that claimant failed to respond to the Department's request for information because he never received the Department's request for that information. Claimant should not be denied benefits for failing to timely respond to a request for information he never received.

For the reasons stated above, claimant is not ineligible for benefits for week 51-19 based upon his failure to timely provide the Department with information necessary to process his claim for benefits.

DECISION: Order No. 20-UI-143291 is set aside, as outlined above.

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

DATE of Service: March 19, 2020

NOTE: 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.

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 ໄດ້ ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄໍາຕັດສິນນີ້.

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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