

**EMPLOYMENT APPEALS BOARD DECISION**  
**2020-EAB-0221**

*Reversed*  
*Eligible Weeks 02-20 through 04-20*

**PROCEDURAL HISTORY:** On January 27, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant failed to provide information to the Department and was therefore not eligible for unemployment insurance benefits from January 5, 2020 through January 11, 2020 and until claimant provided the requested information. Claimant filed a timely request for hearing. On February 27, 2020, ALJ Shoemake conducted a hearing, and on March 4, 2020, issued Order No. 20-UI-145595, concluding claimant failed to provide information to the Department and was therefore not eligible for benefits from January 5, 2020 through January 25, 2020. On March 11, 2020, 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) Claimant's employer completed a reorganization, eliminated claimant's position and laid him off work, prompting claimant to file an initial claim for unemployment insurance benefits on January 9, 2020.

(2) Claimant claimed benefits online for the week from January 5 through 11, 2020 (week 02-20). When claimant claimed week 02-20 online, he answered "yes" to the question of whether he was discharged or suspended from a job during week 02-20. Audio Record at 5:25. Claimant's answer caused an online prompt to appear stating, "Please be sure your answer is correct." Audio Record at 6:23 to 6:55. Claimant did not know that the Department considered a layoff to be different from a discharge and considered his answer to be correct.

(3) Claimant's online response to the question of whether he was discharged or suspended during week 02-20 prompted the Department to mail a letter to claimant on January 14, 2020 for more information about his response to the question. The January 14, 2020 letter stated that claimant must respond to the letter in five days or his failure to do so could result in a denial of benefits. The Department mailed the letter to claimant's correct address and the letter was not returned to the Department by the postal service.

(4) Claimant checked his mail daily and had a locked mailbox.

(5) Claimant did not receive the January 14, 2020 letter from the Department and did not otherwise know the Department required additional information regarding week 02-20.

(6) On January 22, 2020, the Department issued a letter to claimant stating that the week from January 12 through January 18, 2020 (week 03-20) was denied. On January 24, 2020, claimant received the letter.

(7) On January 27, 2020, claimant called the Department regarding the January 22 letter, and during the conversation provided the information solicited by the January 14, 2020 letter. As a result, claimant ended the continuing denial of benefits effective the week of January 26 through February 1, 2020 (week 05-20). Because claimant did not respond to the Department's January 14, 2020 letter until after January 21, 2020, the Department denied claimant benefits for the period of January 5 through January 25, 2020 (weeks 02-20 through 04-20).

**CONCLUSIONS AND REASONS:** Claimant is not ineligible for benefits from January 5, 2020 through January 25, 2020 based upon his failure to provide information to the Department.

ORS 657.155(1) provides, in pertinent part:

(1) 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 \* \* \* .

(b) The individual has made a claim for benefits with respect to such week in accordance with ORS 657.260 (Filing claims for benefits).

\* \* \*

(e) The individual is not disqualified from benefits or ineligible for benefits under any other section of this chapter.

\* \* \*

ORS 657.260(1) provides, "Claims for benefits shall be filed in accordance with such regulations as the Director of the Employment Department may prescribe."

OAR 471-030-0025 provides, in pertinent part:

(1) With all claims, an individual shall furnish the Director with \* \* \* information required for processing their claim. Such information may include, but is not limited to, information pertaining to \* \* \* separations from work \* \* \*.

(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 \* \* \*.

\* \* \*

(January 11, 2018).

There is a presumption that a letter duly directed and mailed was received in the regular course of the mail. ORS 40.135(1)(q). OAR 137-003-0520(10) provides, “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.” (January 31, 2012).

The order under review denied benefits to claimant for the weeks 02-20 through 04-20 for failing to respond to the Department’s January 14, 2020 letter by January 21, 2020, and until January 27, 2020 (week 05-20).<sup>1</sup> The order reasoned that, although claimant testified that he did not receive the January 14 letter from the Department, claimant did not overcome the legal presumption that he received the letter because the letter was mailed to claimant’s correct address, he did not have mail delivery problems, and claimant received other letters from the Department.<sup>2</sup>

The record supports the conclusion that the Department mailed claimant the January 14 letter and that the letter stated that the Department required claimant to provide information by January 21 or such failure to do so could result in a denial of benefits. However, the record does not support the order’s conclusion that claimant failed to rebut the mail-receipt presumption by providing “evidence to the contrary.” The record shows that it is more likely than not that claimant did not receive the January 14 letter. Claimant had all the letters he had received from the Department with him at the hearing, and upon reviewing the letters, testified that he did not have a January 14 letter. Audio Record at 15:20 to 15:31. Claimant checked his mail every day, and had a locked mailbox, which makes it more likely than not that claimant would have received mail that had been placed in his mailbox. Moreover, given claimant’s immediate response when he received the January 22 letter, it is also more likely than not that if claimant had received a document advising him to do something as a condition of receiving benefits,

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<sup>1</sup> The five-day deadline was extended to January 21, 2020 because January 20, 2020 was a holiday. Audio Record at 5:45 to 5:47. Order No. 20-UI-145595 at 2-3.

<sup>2</sup> Order No. 20-UI-145595 at 2.

he would have done it. Claimant therefore established that it is more likely than not he did not receive the January 14 letter.

It would be “oppressive” to require claimant to respond to a letter he never received. Under ORS 657.155(1)(a), claimant therefore cannot be denied benefits for weeks 02-20 through 04-20.

**DECISION:** Order No. 20-UI-145595 is set aside, as outlined above.

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

**DATE of Service:** April 16, 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](http://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

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## 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.

**Employment Appeals Board - 875 Union Street NE | Salem, OR 97311**  
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711  
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