

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0495

Reversed & Remanded

PROCEDURAL HISTORY: On April 16, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant failed to provide information requested by the Department necessary to process his claim, and denying claimant unemployment insurance benefits for the week of March 15, 2020 through March 21, 2020, and until claimant provided the requested information. Claimant filed a timely request for hearing. On June 5, 2020, ALJ S. Lee conducted a hearing, and on June 11, 2020 issued Order No. 20-UI-150936, modifying the Department's decision by concluding claimant failed to provide information required to process his claim and was denied benefits from March 15, 2020 through March 21, 2020, and from March 29, 2020 through April 18, 2020. On June 27, 2020, claimant filed an application for review of Order No. 20-UI-150936 with the Employment Appeals Board (EAB).

EAB considered claimant's written argument in reaching this decision.

FINDINGS OF FACT: (1) On December 30, 2019, claimant filed an initial claim for unemployment insurance benefits, establishing a valid claim.

(2) During the week of March 15, 2020 through March 21, 2020 (week 12-20), claimant's employer, Les Schwab, laid claimant off work.

(3) Claimant claimed benefits for week 12-20. When claimant claimed week 12-20, claimant responded to a question on the weekly claims line indicating that an employer discharged him during week 12-20.

(4) Because claimant indicated that there might have been a disqualifying issue for week 12-20, the Department sent claimant a letter requesting additional information regarding a work separation during week 12-20. Claimant received the letter and read the letter. Based on what he read in the letter, claimant did not return the letter with responses to the questions contained in the letter.

(5) Les Schwab laid claimant off again during the weeks from March 29, 2020 through April 18, 2020 (weeks 14-20 through 16-20). Claimant claimed benefits for those weeks and provided the Department

with additional information about his claim. Weeks 12-20 and 14-20 through 16-20 are the weeks at issue.

(6) Claimant tried to call the Department regarding the weeks at issue, but the Department's lines were busy.

CONCLUSIONS AND REASONS: Order No. 20-UI-150936 is set aside, and this matter is remanded to the Office of Administrative Hearings for another hearing and order in this case.

It is first necessary to provide the law that applies to this case. 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).

It is undisputed that claimant received a letter from the Department shortly after he claimed the week of March 15 through March 21, 2020 (week 12-20). The Department representative testified that claimant claimed week 12-20 on March 29, 2020, and yet also testified that the letter requesting additional information “should have gone out” on March 24, 2020. Audio Record at 14:19 to 14:42. The Department then testified that the information was “probably” due five days later, by March 29. Audio Record at 14:45 to 14:59. It is undisputed that claimant did not return the letter with responses to the questions it contained, or otherwise provide the information the letter requested to the Department.

Order No. 20-UI-150936, the order under review in this decision, concluded that claimant failed to respond to the Department’s letter because he did not believe he needed to respond to the request due to his mistaken belief that the Department would resolve its questions from claimant’s responses to the weeks he claimed after week 12-20.¹ However, claimant also testified that *based on what he read in the letter*, he understood that the letter did not apply to his situation and that, because it did not apply to his situation, he was supposed to merely continue claiming benefits. Audio Record at 17:34 to 20:26. Claimant testified that the questions did not appear to apply to his situation, so he did not believe he needed to send in the letter with responses. Audio Record at 27:11 to 27:47.

The record is insufficient to determine if claimant followed the instructions in the letter because the letter is not in the record, and the Department representative did not address the portions of the letter in his testimony that claimant relied upon to determine that he was not being asked to provide additional information. On remand, it is necessary to obtain a copy of the letter or have a party read the letter into the record to determine if claimant failed to respond appropriately to the letter. Moreover, it is necessary to obtain the correct date the letter was mailed, and when the response was due. Any party submitting additional information for hearing, such as the Department’s letter to claimant or any other new information, must follow the instructions for doing so contained in the notice of the new hearing. Those instructions include providing copies of the new information to the administrative law judge and the other parties before the hearing.

Claimant also testified that he tried to contact the Department, but was unable to speak with anyone because the telephone lines were busy. Audio Record at 26:27 to 27:11. On remand, it is necessary to determine during what time period claimant attempted to call the Department, why he called the Department, if he attempted to contact the Department by any other means, and if so, when he attempted to do so. If claimant was calling the Department to ask why he was being denied benefits, it is necessary to ask claimant if he would have provided the Department the information it was requesting in the letter

¹ Order No. 20-UI-150936 at 3-4.

if the Department representative had told him his failure to respond to the letter was the reason for the denial. Moreover, on remand, it is also necessary to determine if claimant provided the information required to process his claim for the weeks at issue when he restarted his claim for week 14-20, or when he answered the Department's questions when he claimed weeks 14-20 through 16-20.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary for a determination of whether claimant shall be denied benefits for weeks 12-20 and 14-20 through 16-20 due to a failure to provide information to the Department that was required for processing claimant's claim, Order No. 20-UI-150936 is reversed, and this matter is remanded.

DECISION: Order No. 20-UI-150936 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: July 31, 2020

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 20-UI-150936 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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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 ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

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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