

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-1025

Modified
Ineligible Weeks 28-21 through 30-21
Eligible Weeks 31-21 and 33-21

PROCEDURAL HISTORY: On August 25, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant failed to register for work in accordance with the Department's rules and therefore was ineligible to receive unemployment insurance benefits for the week of July 11, 2021 through July 17, 2021 (week 28-21), and until the reason for the denial had ended. Claimant filed a timely request for hearing. On November 15, 2021, ALJ Ramey conducted a hearing, and on November 23, 2021 issued Order No. 21-UI-180322, modifying the August 25, 2021 administrative decision by concluding that claimant was ineligible for benefits for the weeks from July 11, 2021 through August 7, 2021 (weeks 28-21 through 31-21), but eligible for benefits for the week of August 15, 2021 through August 21, 2021 (week 33-21). On November 30, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On May 25, 2021, claimant filed an initial claim for unemployment insurance benefits. Claimant claimed, but was not paid, benefits for the weeks from July 11, 2021 through August 7, 2021 (weeks 28-21 through 31-21) and from August 15, 2021 through August 21, 2021 (week 33-21), the weeks at issue.

(2) On July 2, 2021, the Department mailed claimant a letter that notified him that to be eligible for benefits he was required to complete the Department's iMatchSkills (IMS) registration process by July 17, 2021. Claimant received the Department's letter and was aware of the July 17, 2021 deadline.

(3) On July 8, 2021, the Department "flagged" claimant's claim, and initiated an investigation, because they became concerned that his claim may have been compromised by an identity (ID) theft issue. Audio Record at 11:45. The flag on claimant's benefits claim would not have prevented him from registering in IMS online.

(4) On July 9, 2021, the Department mailed claimant a second letter that notified him that to be eligible for benefits he was required to complete the Department's IMS registration process by July 17, 2021. Claimant received the Department's letter and remained aware of the July 17, 2021 deadline.

(5) On August 2, 2021, claimant called the Department and informed the Department's representative that he had been unable to complete the IMS registration online because the website had "locked (him) out of (his) claim." Audio Record at 11:32. The Department's representative advised claimant that the Department had locked his claim due to the ID theft concerns and that he would not be able to "do anything until the investigation (was) over." Audio Record at 17:18.

(6) On August 20, 2021, the Department completed the ID theft investigation. Claimant spoke with a representative from the Department who informed him that he would now be able to complete his IMS registration.

(7) From August 20, 2021 to August 25, 2021, claimant still could not complete his IMS registration because he remained still locked out of his claim.

(8) On August 26, 2021, claimant called the Department and informed the Department's representative that he was still not able to register in IMS due to the lock out. The Department's representative assisted claimant with unlocking his account and claimant completed the required IMS registration.

CONCLUSIONS AND REASONS: Claimant did not register for work in accordance with the Department's rules and therefore was ineligible for benefits for the weeks including July 11, 2021 through July 31, 2021 (weeks 28-21 through 30-21). The Department is estopped from denying claimant benefits for the weeks of August 1, 2021 through August 7, 2021 (week 31-21) and August 15, 2021 through August 21, 2021 (week 33-21), and claimant is eligible for benefits for these weeks.

Because the Department did not pay claimant benefits for the weeks at issue, claimant has the burden to show that he was eligible for benefits for those weeks. *See Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976) (where the Department has paid benefits it has the burden to prove benefits should not have been paid; by logical extension of that principle, where benefits have not been paid claimant has the burden to prove that the Department should have paid benefits).

ORS 657.155(1)(a) states that an unemployed individual is eligible to receive benefits only if the individual has registered for work and thereafter continued to report at an employment office in accordance with Department rules. ORS 657.159 states that to satisfy the registration requirement of ORS 657.155(1) an individual shall submit such information regarding the individual's job qualifications, training and experience as the Department requests.

OAR 471-030-0035 (January 11, 2018) states in relevant part:

- (1) A claimant may fulfill the "registered for work" requirements of ORS 657.155(1)(a) by completion of such processes as directed by the Director in order to create a full registration for work.

(2) "Full registration for work" as used in this rule, means providing information regarding the individual's job qualifications, skills, training and experience as the Director or an authorized representative of the Director deems necessary to carry out job placement services for the individual.

* * *

OAR 471-020-0020 (August 8, 2004) states in relevant part:

(1)(a) Except for individuals identified in OAR 471-020-0021, all unemployment insurance claimants shall submit such information as may be required by the Oregon Employment Department to carry out job placement services for the individual including, but not limited to, the individual's job qualifications, training and experience. Such information shall be entered into the Business & Employment Services online job match system concurrent with, or as soon as possible following, the filing of an initial claim for unemployment insurance benefits. Entry of this information shall constitute enrollment.

* * *

The record shows that the Department notified claimant on two occasions that he needed to complete the IMS registration requirements by July 17, 2021. Although claimant received the notifications prior to the July 17, 2021 deadline, claimant did not timely complete his IMS registration. The record shows that claimant attempted to complete his online IMS registration both prior to and after the July 17, 2021 deadline, but that he may have been prevented from doing so by the IMS online system. However, claimant did not successfully make contact with the Department to try to resolve the difficulties he was having with the IMS online system until August 2, 2021, and there is otherwise no "good cause" exception to the Department's IMS registration requirement in the applicable administrative rules or statutes. Therefore, because claimant did not complete the IMS registration requirement prior to the July 17, 2021 deadline, and because he did not otherwise make contact with the Department until August 2, 2021 to try to resolve the IMS online system issues he was experiencing, claimant was ineligible for benefits for weeks 28-21 through 30-21.

However, the record shows that the Department should be equitably estopped from denying claimant benefits for weeks 31-21 and 33-21 based on his inability to complete the IMS registration during these two weeks. The doctrine of equitable estoppel "requires proof of a false representation, (1) of which the other party was ignorant, (2) made with the knowledge of the facts, (3) made with the intention that it would induce action by the other party, and (4) that induced the other party to act upon it." *Keppinger v. Hanson Crushing, Inc.*, 161 Or App 424, 428, 983 P2d 1084 (1999) (citation omitted). In addition, to establish estoppel against a state agency, a party "must have relied on the agency's representations and the party's reliance must have been reasonable." *State ex rel SOSC v. Dennis*, 173 Or App 604, 611, 25 P3d 341, *rev den*, 332 Or 448 (2001) (citing *Dept. of Transportation v. Hewett Professional Group*, 321 Or 118, 126, 895 P2d 755 (1995)).

Claimant called the Department on August 2, 2021 and informed them that he was locked out of the IMS system. In response, a representative from the Department informed claimant that he was locked out of the system due to the ongoing ID theft investigation related to claimant's claim for benefits.

Claimant was advised that he would not be able to “do anything” with regard to his IMS registration until the ID theft investigation was completed.

Given that the record supports the reasonable inference that claimant would have been able to access the IMS system notwithstanding the ongoing investigation, the preponderance of the evidence demonstrates that claimant reasonably relied on the representative’s false representation that claimant would not be able to access the IMS system and complete the IMS registration until the Department’s ID theft investigation was completed. Based on this reasonable reliance, claimant then waited until he received notice on August 20, 2021 that the ID theft investigation was finished, before he took action to complete his IMS registration on August 26, 2021. Therefore, because the Department’s representative induced claimant through a false representation to take action to complete his IMS registration only after the ID theft investigation was completed, and because claimant reasonably relied on this false representation to his detriment, the Department is equitably estopped from denying claimant benefits for weeks 31-21 and 33-21.

For the forgoing reasons, claimant is ineligible for benefits for weeks 28-21 through 30-21 because he failed to timely register for work in accordance with the Department’s rules. However, the Department is estopped from denying claimant benefits for weeks 31-21 and 33-21 for the reasons previously stated.

DECISION: Order No. 21-UI-180322 is modified, as outlined above.

D. Hettle and A. Steger-Bentz;
S. Alba, not participating.

DATE of Service: January 6, 2022

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 ໄດ້ ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

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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