

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0537

Affirmed
Eligible Week 09-22
Ineligible Weeks 10-22 through 12-22

PROCEDURAL HISTORY: On March 16, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant had failed to register for work in accordance with the Department's rules and therefore was ineligible for unemployment insurance benefits from February 27, 2022 through March 5, 2022 (week 09-22) and until the reason for the denial had ended. Claimant filed a timely request for hearing. On April 25, 2022, ALJ Lucas conducted a hearing, and on April 27, 2022 issued Order No. 22-UI-192329, modifying the March 16, 2022 administrative decision by concluding that claimant was eligible to receive benefits for week 09-22, but had failed to register for work in accordance with the Department's rules and therefore was ineligible to receive benefits from March 6, 2022 through March 26, 2022 (weeks 10-22 through 12-22). On May 3, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant's written argument when reaching this decision.

FINDINGS OF FACT: (1) On November 22, 2021, claimant filed an initial claim for unemployment insurance benefits. Claimant claimed benefits for the week of November 14, 2021 through November 20, 2021 (week 46-21), but stopped claiming benefits for several months thereafter.

(2) On November 23, 2021, the Department mailed claimant a letter advising her that to be eligible for benefits, she was required to complete her iMatchSkills registration by December 7, 2021. The letter also stated, "If you are not filing weekly unemployment claims, this requirement does not apply to you right now, but if you restart your claim, you will have to complete your registration." Transcript at 6.

(3) In or around early March 2022, claimant restarted her claim and claimed benefits for the weeks from February 27, 2022 through March 26, 2022 (weeks 09-22 through 12-22), the weeks at issue. The Department did not pay claimant benefits for those weeks.

(4) When an individual restarts their claim without having completed their iMatchSkills registration for the benefit year, the Department's online claim system will advise the individual of the outstanding

registration requirement via a pop-up notification. However, the pop-up notification does not always appear on the mobile version of the online claim system. Claimant claimed benefits using a mobile device, and was not shown the pop-up notification when she restarted her claim in March 2022.

(5) On March 7, 2022, the Department mailed claimant a letter notifying her that she had not been paid benefits for week 09-22 because she had not completed her registration requirement. Claimant received the letter “probably just a couple [of] days” after it was mailed. Transcript at 25.

(6) On March 14, 2022, an adjudicator from the Department contacted claimant regarding a work separation unrelated to the matter in this case. At that time, claimant asked the adjudicator “if there was anything else that [she] needed to get done” to be eligible for benefits, and the adjudicator told her that there was not. Transcript at 25.

(7) On March 15, 2022, the Department mailed another letter to claimant, again advising her that she had not been paid benefits that she had claimed because she had not completed her registration requirement. Claimant received the March 15, 2022 letter, as well as the March 16, 2022 administrative decision.

(8) On March 18, 2022, the Department issued decision # 92538, concluding that claimant was discharged, but not for misconduct, and therefore was not disqualified from receiving benefits based on the work separation. Exhibit 2. Claimant understood the adjudicator’s prior statement to her, and decision # 92538, to mean that she was eligible for benefits and did not need to complete any other requirements.

(9) On March 29, 2022, claimant contacted the Department again because she still had not been paid benefits. At that time, the representative she spoke to informed her that she needed to complete the registration requirement to be eligible for benefits. Claimant called a WorkSource office the same day and scheduled an appointment with them for the following day. Claimant completed the registration requirement on March 30, 2022. Prior to March 29, 2022, claimant was not aware that she had to complete the registration requirement to be eligible for benefits.

CONCLUSIONS AND REASONS: Claimant is eligible for benefits for week 09-22. Claimant failed to register for work in accordance with the Department’s rules, and is therefore ineligible for benefits, for weeks 10-22 through 12-22.

ORS 657.155(1)(a) states that an individual shall only be eligible to receive benefits with respect to any week if “[t]he individual has registered for work at and thereafter has continued to report at an employment office in accordance with” the Department’s 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) provides, in 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(l)(a) (August 8, 2004) provides, in relevant part, that except for individuals identified in OAR 471-020-0021 (January 8, 2006),¹ 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 Department denied claimant payment of benefits for the weeks at issue because she had not completed her iMatchSkills registration prior to claiming those weeks. The Department notified claimant of the registration requirement via letters sent to her on November 23, 2021, March 7, 2022, and March 15, 2022, as well as via the March 16, 2022 administrative decision itself. When claimant restarted her claim in or around early March 2022, she did not receive a pop-up notification advising her of the registration requirement because she was using a mobile device to access the online claim system. It is unclear if claimant actually received the November 23, 2021 letter. At hearing, claimant testified that she did receive the letter “maybe a few days” after the Department mailed it, but that she “most likely shredded it[.]” Transcript at 13. Claimant later testified that did not remember receiving that letter. Transcript at 18. Even if claimant *did* receive the November 23, 2021 letter, however, that letter itself was insufficient to put claimant on notice that she needed to complete the registration by a particular date if and when she restarted her claim. Because claimant neither knew or should have known that she had to complete the registration requirement prior to claiming week 09-22 (the first week claimed after she restarted her claim), claimant is eligible for benefits for week 09-22.

The same cannot be said for claimant’s eligibility for weeks 10-22 through 12-22. As with the letter mailed on November 23, 2021, the record contains inconsistencies regarding whether claimant actually received the letter mailed on March 7, 2022. At hearing, claimant testified that she received the March 7, 2022 letter “probably just a couple [of] days” after it was mailed. Transcript at 25. Claimant’s use of the word “probably” suggests, in this context, that she might have been testifying speculatively rather than on the basis of her own recollection. However, claimant bears the burden of proof in this case,² and the ambiguity in the record must therefore be resolved against her. Therefore, the record fails to show that claimant did not receive the March 7, 2022 letter, and facts have been found accordingly.

¹ None of the exceptions contained within OAR 471-020-0021 are applicable to claimant’s circumstances.

² 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).

Because claimant received the March 7, 2022 letter within a “couple of days” of its mailing, claimant likely was on notice of the registration requirement by March 9, 2022. Therefore, the registration requirement applied to claimant as of that week (week 10-22). At hearing, claimant explained that she did not complete the registration, even after receiving the March 15, 2022 letter, because the adjudicator she had spoken to told her that “there was nothing else [she could] do, and that everything was up to date, and [she] just needed to sit tight [.]” Transcript at 32. Claimant similarly asserted in her written argument that she believed “everything was up to date and good” in mid-March 2022, and did not complete the registration at that time due to that belief. Claimant’s Written Argument at 2. In so asserting, claimant is essentially arguing that the Department should be estopped from denying her benefits for weeks 10-22 through 12-22 because her delayed completion of the registration was the result of her reliance on the adjudicator’s incorrect statement.

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 SOSOC 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)). “The [mis]representation must be justifiably relied upon by [the party] in taking action or in refraining from it to [their] damage.” *Meader v. Francis Ford, Inc.*, 286 Or. 451, 456, 595 P.2d 480 (1979).”

Claimant’s argument for estoppel fails for two reasons. First, while the record shows that the adjudicator’s statement to claimant that she did not need to do anything else to be eligible for benefits was false, claimant has not shown that the adjudicator made that statement with *knowledge of the facts*. In other words, for estoppel to apply here, the adjudicator must have known that claimant still needed to complete her registration but knowingly gave her the wrong information for the purposes of keeping her from completing the registration. The record contains no indication that the false statement was the result of anything other than a mistake made by the adjudicator.

Second, the record shows that claimant received multiple documents that specifically advised her to complete her registration to be eligible for benefits. While claimant may have misunderstood the adjudicator’s statement to mean that she could disregard those documents, the record does not show that the adjudicator specifically advised her to disregard them. Claimant was essentially faced with conflicting information—the documents which specifically advised her to take action, and the adjudicator’s general advice that she did not need to take action—and disregarded one piece of information in favor of the other without any apparent attempt to resolve the conflict. Because claimant did not do so, her reliance on the adjudicator’s advice was not reasonable under the circumstances. As such, the doctrine of equitable estoppel does not apply against the Department for weeks 10-22 through 12-22.

For the above reasons, claimant was eligible for benefits for week 09-22, and was ineligible for benefits for weeks 10-22 through 12-22.

DECISION: Order No. 22-UI-192329 is affirmed.

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

DATE of Service: July 26, 2022

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 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

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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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