

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0585

Reversed
Eligible Week 33-21

PROCEDURAL HISTORY: On September 23, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant filed a late claim for unemployment insurance benefits for the week of August 15, 2021 through August 21, 2021 (week 33-21) and therefore was denied benefits for that week (decision # 104321). Claimant filed a timely request for hearing. On April 27, 2022, ALJ Amesbury conducted a hearing at which the employer failed to appear, and on April 29, 2022 issued Order No. 22-UI-192561, affirming decision # 104321. On May 19, 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) At all times relevant to this decision, claimant worked for the City of Portland (the employer). Around June 2021, the employer sought to reduce employee work hours. As such, and in an effort to avoid layoffs, the employer allowed employees to take one or more furlough days every week. Employees were required to commit to a specific number of furlough days per week. Claimant chose to take one furlough day per week. The employer did not pay their employees their regular salary for furlough days but entered into an agreement with the Department in which employee pay for furlough days was partially replaced by way of unemployment insurance benefits paid under the Department's Work Share program.¹

(2) On June 14, 2021, claimant filed an initial claim for unemployment insurance benefits through the Work Share program. The Department established claimant's weekly benefit amount as \$673. Thereafter, per the procedure set out in statute and by the Department's rule,² the employer submitted claims for weekly benefits on behalf of their partially-furloughed employees, including claimant. However, due to a mistake, the employer failed to include claimant's name on the weekly claim for the

¹ See ORS 657.370 to ORS 657.390.

² See OAR 471-030-0079 (June 21, 2021).

week of August 15, 2021 through August 21, 2021 (week 33-21, herein “the week at issue”). The Department did not pay claimant benefits for the week at issue. Claimant completed and submitted to the employer all required documentation for the week at issue, and the employer’s failure to include claimant’s name on the claim for the week at issue was not the result of any act or omission on claimant’s part.

(3) Prior to the week at issue, the employer had been late in filing weekly claims for benefits, or amendments thereto, on behalf of their employees. The employer received warnings from the Department for filing the weekly claims late. The Department had sometimes accepted late Work Share claims while issuing warnings to employers, but did not do so in claimant’s case regarding the week at issue.

(4) On September 15, 2021, claimant contacted the Department to inquire about the status of payment for the week at issue. The Department representative advised claimant that his name had been left off of the claim for that week. Claimant had not previously been aware of the omission. On September 20, the employer submitted an amended claim for benefits for the week at issue, which included claimant’s name.

CONCLUSIONS AND REASONS: Claimant was eligible for benefits during week 33-21.

ORS 657.380(1)(b) provides, in pertinent part, that an individual is unemployed and eligible to receive shared work benefits with respect to any week if, in addition to meeting all other eligibility requirements of Chapter 657, the Department finds that “during the week the individual’s normal weekly hours of work were reduced, in accordance with an approved plan, at least 20 percent but not more than 40 percent, with a corresponding reduction in wages.”

Continued claims for shared work benefits shall be completed by the shared work employer and submitted to the Employment Department no later than seven days following the end of the week for which benefits, waiting week credit, non-compensable credit week, or any combination of these is claimed. Shared work employees must provide the employer all information needed in order to submit a timely continued claim for shared work benefits. Such information may include, but is not limited to, information about work and earnings for another employer, missed opportunities to work, or other paid time used during the week being claimed. OAR 471-030-0079(9).

Claimant’s claim for benefits for week 33-21 was due within seven days of the end of the week for which benefits were claimed. As week 33-21 ended on August 21, 2021, the claim should have been filed by the employer no later than August 28, 2021. Because the employer did not submit the claim until September 20, 2021, the claim was late.

The order under review concluded that because claimant’s claim for the week at issue was late, and because the applicable rules “do not contain a good faith or good cause exception to the filing deadline, nor do they contain provisions for apportioning fault for failure to timely file a claim,” claimant was ineligible for benefits during the week at issue. Order No. 22-UI-192561 at 3. In so concluding, the

order under review mistakenly relied upon OAR 471-030-0045 (January 11, 2018),³ which does not apply to benefits claimed under the Work Share program. Instead, weekly claims filed under the Work Share program are governed by OAR 471-030-0079(9). That rule provides for a seven-day limitation on weekly claims for Work Share benefits, as does OAR 471-030-0045(4) in regards to claims for regular benefits, and likewise does not include a good-cause exception for late filings.

However, the record indicates that, notwithstanding the lack of a good-cause exception in OAR 471-030-0079(9), the Department has read such an exception into the rule. At hearing, the Department's witness testified that the Department had already warned the employer "a bunch of times" that they were required to file timely claims for Work Share benefits on behalf of their employees. Audio Record at 22:45. The Department's witness also testified that in other cases, the Department had accepted late Work Share claims, while issuing warnings to the employers in question. Audio Record at 22:50. The Department's witness did not explain, nor does the record otherwise show, from what authority the Department derives its discretion to grant exceptions to its timely filing requirement for Work Share claims. Neither does the record show what the contours of that discretion are, and it does not appear that the Department has published clear guidance on that point.⁴

In the absence of an explanation of how the Department grants exceptions in its Work Share program to the timely filing requirement under OAR 471-030-0079(9), concluding that claimant's circumstances do not merit an exception where other similarly-situated individuals have been granted one is arbitrary and capricious. The Department may not arbitrarily determine whether an individual is eligible to receive benefits without basing its determination on objective criteria that has been made available to the parties. As such, claimant must be afforded the benefit of the exception to the timely filing requirement under OAR 471-030-0079(9) that the Department sometimes grants, and the order under review therefore erred in concluding that claimant was ineligible to receive benefits during the week at issue.

Further, claimant was not afforded due process in regards to claiming benefits for the week at issue. Because of the way that the Work Share program is administered, claimant was not responsible for the filing of any of his weekly claims for benefits. Rather, he was entirely at the mercy of the employer's ability to timely and accurately file claims on his behalf. As the Department's witness testified at hearing, claimant's only real choice was whether to enroll in Work Share and receive partial benefits for his furlough days, or else abstain and not receive any payment for his furlough days at all. Audio Record at 13:30. Likewise, the Department's witness testified that claimant could not have filed his own claim for regular unemployment insurance benefits while he was enrolled in the work share program.⁵ Audio Record at 13:53. Finally, the Department witness testified that claimant had no way of even knowing that the employer had left his name off of the weekly claim that they submitted until after the timely filing deadline had passed. Audio Record at 22:22.

³ "A continued claim must be filed no later than seven days following the end of the week for which benefits, waiting week credit, or noncompensable credit, or any combination of the foregoing is claimed[.]" OAR 471-030-0045(4).

⁴ For instance, the Department's internal guidance, published several years prior to the passage of OAR 471-030-0079, states only that "Timeliness provisions apply [to continued claims for Work Share benefits] but may be extended if 'good cause' is established," but does not define "good cause" in that context. Oregon Employment Department, UI Benefit Manual § 952 (Rev. March 1, 2005).

⁵ Presumably, claimant's earnings for the week at issue, even when accounting for the furlough day, would have exceeded his weekly benefit amount, and he therefore would not be considered "unemployed" under ORS 657.100(1).

The record shows that claimant was not afforded due process because, once enrolled in the Work Share program, he could not separately qualify for regular benefits while still working for the employer, had no control over when (or if) a claim for weekly benefits under the Work Share program was filed on his behalf, had no way of knowing if the employer failed to timely file on his behalf, and had no recourse under the rules or procedures established by the Department if the employer filed late. Had the Department administered the program in a way that allowed claimant to ensure that either he, or the employer on his behalf, timely filed a claim for benefits for the week at issue, the record suggests that claimant would have done so. Therefore, equity dictates that claimant was eligible to receive benefits for the week at issue.

DECISION: Order No. 22-UI-192561 is set aside, as outlined above.

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

DATE of Service: August 10, 2022

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 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 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 الإستئناف 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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