

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0803

Reversed

*Eligible Weeks 11-20 through 18-20, 20-20 through 42-20, 44-20 through 12-21,
14-21 through 22-21, and 30-21 through 35-21*

PROCEDURAL HISTORY: On May 11, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant failed to provide information in accordance with the Department's rules and therefore was ineligible for unemployment insurance benefits for the weeks including March 8, 2020 through September 4, 2021 (weeks 11-20 through 35-21) and until the reason for the denial had ended (decision # 589312). Claimant filed a timely request for hearing. On July 5, 2022, ALJ Frank conducted a hearing, and on July 13, 2022 issued Order No. 22-UI-198214, affirming decision # 589312 by concluding that claimant was ineligible to receive benefits for weeks claimed 11-20 through 35-21. On July 18, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant's argument to the extent it was based on the record.

FINDINGS OF FACT: (1) On November 18, 2020, claimant filed an initial application for Pandemic Unemployment Assistance (PUA) benefits. Claimant claimed benefits for the weeks including March 8, 2020 through May 2, 2020 (weeks 11-20 through 18-20), May 10, 2020 through October 17, 2020 (weeks 20-20 through 42-20), October 25, 2020 through March 27, 2021 (weeks 44-20 through 12-21), April 4, 2021 through June 5, 2021 (weeks 14-21 through 22-21), and July 25, 2021 through September 4, 2021 (weeks 30-21 through 35-21).¹ These are the weeks at issue. The Department did not pay claimant benefits for the weeks at issue.

¹ EAB has taken notice of this fact, which is contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). Any party that objects to our taking notice of this information must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the noticed fact will remain in the record.

(2) The U.S. Department of Labor required state agencies to verify the identities of claimants who applied for PUA benefits. The Department elected to use a third party vendor, called "ID.Me," to conduct identity verifications of PUA claimants. Audio Record at 9:14.

(3) On April 28, 2022, the Department sent claimant a notice that he was required to complete the ID.Me verification process by May 9, 2022. Claimant received the Department's notice the day it was sent. On May 2, 2022, claimant began making efforts to comply with the ID.Me verification process, which required him to transmit pictures of identifying information to ID.Me. Claimant was elderly, not proficient with technology, and had only his cell phone and "a 1980s model computer" to transmit the information. Audio Record at 16:02. Claimant had trouble with his computer on May 2, 2022, but sent pictures of his driver's license and Social Security card to ID.Me on that day.

(4) On May 4, 2022, ID.Me informed claimant that they needed more information. On May 7, 8, and 9, 2022, at ID.Me's request, claimant re-sent pictures of his driver's license and Social Security card, and sent a picture of his power bill as well as a photograph of himself. On May 9, 2022, claimant received an email from ID.Me stating that claimant's identity verification information had been "successfully delivered." Audio Record at 22:47.

(5) As of May 9, 2022, the Department lacked information in its records that claimant completed the identity verification process through ID.Me.

CONCLUSIONS AND REASONS: Claimant provided information in accordance with the Department's rules and is not ineligible to receive benefits for the weeks at issue on that basis.

Under ORS 657.155(1)(b), in order to be eligible to receive benefits with respect to any week, an individual must make "a claim for benefits with respect to such week in accordance with ORS 657.260." ORS 657.260(1) provides that claims for benefits shall be filed in accordance with such regulations as the Department may prescribe. OAR 471-030-0025 (January 11, 2018) states:

- (1) With all claims, an individual shall furnish the Director with . . . information required for processing their claim. * * *
- (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.

* * *

The order under review concluded that claimant was ineligible to receive benefits because he did not file his claim in accordance with Department rules by failing to furnish information necessary to process the claim. Order No. 22-UI-198214 at 3. The record does not support this conclusion.

Claimant met his burden to show that he provided the identity verification information required by the Department.² The Department required claimant furnish information to ID.Me to complete his identity verification by May 9, 2022. The record shows that on May 2, 7, 8, and 9, 2022 claimant sent pictures of his driver's license and Social Security card to ID.Me. The record further shows that claimant sent a picture of his power bill and a photograph of himself to ID.Me on May 7, 8, and 9, 2022. On May 9, 2022, ID.Me informed claimant that his identity verification information had been successfully delivered. This evidence is sufficient to establish, more likely than not, that claimant provided the requested identity verification information to ID.Me and that he did so within the timeframe required by the Department.

The Department representative testified at hearing that the Department lacked information in its records that claimant completed the identity verification process through ID.Me. Audio Record at 9:12. However, given that the Department elected to use a third party vendor to complete the identity verification, it is possible that ID.Me simply did not convey that information to the Department, and not that claimant failed to actually complete the identity verification process. Here, the record shows that claimant made substantial efforts, over the course of several days, to submit and re-submit the information to ID.Me, and that ID.Me ultimately confirmed that claimant's identity verification information had been successfully delivered. On this record and given the Department's use of a third party vendor, the absence of completion information in the Department's records is not sufficient to show that claimant did not provide information in accordance with the Department's rules. Accordingly, claimant provided information in accordance with the Department's rules and is not ineligible to receive benefits for the weeks at issue on that basis.

DECISION: Order No. 22-UI-198214 is set aside, as outlined above.

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

DATE of Service: October 20, 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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² Claimant did not receive benefits for the weeks at issue and, therefore, claimant had the burden to prove that he should have been paid benefits for those weeks. *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).

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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 ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

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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