

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0083

Reversed
Timely Claim for Benefits Filed
Eligible Week 35-22

PROCEDURAL HISTORY: On October 3, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant filed a late claim for benefits for the week of August 28, 2022 through September 3, 2022 (week 35-22) and therefore was ineligible for benefits for that week (decision # 101924). Claimant filed a timely request for hearing. On December 29, 2022, ALJ Kaneshiro conducted a hearing, and on January 3, 2023 issued Order No. 23-UI-211437, affirming decision # 101924. On January 11, 2023, the employer filed an application for review with the Employment Appeals Board (EAB). On January 17, 2023, claimant filed an application for review with EAB.

WRITTEN ARGUMENT: EAB considered the employer's written argument filed February 9, 2023 when reaching this decision. EAB did not consider the employer's written argument filed January 11, 2023 when reaching this decision because they did not include a statement declaring that they provided a copy of their argument to the other parties as required by OAR 471-041-0080(2)(a) (May 13, 2019).

FINDINGS OF FACT: (1) On July 21, 2022, claimant filed an initial claim for unemployment insurance benefits through the Department's Work Share program.

(2) Under the Work Share program, employers were responsible for filing weekly claims for benefits on behalf of their employees. Employers claimed benefits by submitting information to the Department via the Department's online contact form.

(3) On September 7, 2022, the employer's bookkeeper submitted a weekly claim for August 28, 2022 through September 3, 2022 (week 35-22) on claimant's behalf. This is the week at issue. The bookkeeper kept a spreadsheet of the weekly claims that they submitted on behalf of their employees, and entered claimant's claim for the week at issue as having been submitted that day. The Department had no record of the employer having made the submission on September 7, 2022.

(4) On or around September 30, 2022, the employer learned that the Department had no record of the weekly claim they submitted for claimant for the week at issue. On September 30, 2022, the employer's bookkeeper re-submitted the claim on claimant's behalf.

CONCLUSIONS AND REASONS: The employer filed a timely claim for benefits on claimant's behalf for week 35-22, and claimant therefore was eligible for benefits for that week.

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) (June 25, 2021).

Claimant's claim for benefits for week 35-22 was due within seven days of the end of the week for which benefits were claimed. As week 35-22 ended on September 3, 2022, the claim was due by September 10, 2022.

The order under review found that the employer's bookkeeper "failed to submit the weekly claim for the week at issue until September 30, 2022," and concluded that claimant therefore was ineligible for benefits for that week because the employer had submitted the weekly claim late. Order No. 23-UI-211437 at 2. The record does not support that finding or conclusion. In concluding that the employer did not submit the weekly claim on September 7, 2022, the order under review weighed the accounts of the Department and the employer, explaining that the Department's account was more persuasive because the Department had no record of the employer's timely claim for the week at issue and "neither party was aware of a technical issue that would have prevented employer from filing the weekly claim." Order No. 23-UI-211437 at 2. However, the fact that neither party was *aware* of a technical issue with the Department's system during the applicable period does not mean that such an issue did not exist.

Moreover, the Department did not offer any evidence to directly show that the employer failed to submit a timely claim for the week at issue. The fact that the Department had no record of the employer's timely claim is not sufficient to rebut the employer's assertion that they submitted the claim by the deadline. At best, that fact is circumstantial evidence. By contrast, the fact that the employer's bookkeeper recorded the claim as having been filed timely is direct evidence to support the finding that the employer filed the claim timely. As such, the employer's account is entitled to greater weight, and the facts have been found accordingly.

Because the employer filed claimant's weekly claim for the week at issue on September 7, 2022, they filed the claim within seven days following the end of the week at issue, in accordance with OAR 471-

030-0079, and therefore filed the claim timely. As such, claimant was eligible for benefits for the week at issue.

DECISION: Order No. 23-UI-211437 is set aside, as outlined above.

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

DATE of Service: March 9, 2023

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.

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.

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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 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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