

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0276

Reversed
Eligible Weeks 47-22 through 52-22

PROCEDURAL HISTORY: On December 9, 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 was ineligible for benefits for from November 20 through December 3, 2022 (weeks 47-22 through 48-22) and until the reason for the denial had ended (decision # 94342). Claimant filed a timely request for hearing. On February 7, 2023, ALJ Clemons conducted a hearing, and on February 10, 2023 issued Order No. 23-UI-215696, modifying¹ decision # 94342 by concluding that claimant failed to actively seek work from November 20, 2022² through December 31, 2022 (weeks 47-22 through 52-22) and therefore was ineligible for benefits for those weeks. On March 2, 2023, 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), other than EAB Exhibits 1 and 2 and where information contained in Department records are taken notice of as indicated below, 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.

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is, first, decision # 94342, which has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. The second

¹ Although the order under review stated that it was affirming decision # 94342, it modified the administrative decision because it changed claimant's weeks of ineligibility from weeks 47-22 through 48-22 to weeks 47-22 through 52-22. Order No. 23-UI-215696 at 4.

² Although the order under review stated that claimant's weeks of ineligibility began October 20, 2022, the reference to October is presumed to be a typographical error and it is presumed that the order intended to reference November 20, 2022. This is because week 47-22 corresponds to the week on the 2022 claim calendar that begins November 20, 2022.

piece of additional evidence is the notice of hearing in this case, which has been marked as EAB Exhibit 2, and a copy provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 and EAB Exhibit 2 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 exhibits will remain in the record.

FINDINGS OF FACT: (1) On January 17, 2022, claimant filed an initial claim for unemployment insurance benefits. Claimant claimed benefits for several weeks and then stopped claiming.

(2) On September 17, 2022 claimant restarted his claim and resumed claiming benefits each week. On claimant's weekly claim forms for each week he claimed following the restart, claimant reported that he was temporarily laid off from his regular employer and intended to return to work for that employer. Claimant did not list that he sought work from prospective employers other than his regular employer on the claim forms, which is permitted in situations where an individual is temporarily laid off.

(3) In October 2022, claimant moved from his residence in Springfield, Oregon to a new address in Eugene, Oregon. At the end of October 2022, claimant updated his address with the Department by entering the Eugene address into his iMatchskills profile and into the online claims system accessible through the Department's website.

(4) In early November 2022, the Department reviewed claimant's claim forms and noticed he had reported that he was on a temporary layoff, which the Department believed was not applicable to claimant's circumstances.

(5) On November 9, 2022, the Department sent claimant a letter requesting his work search activities for the weeks he had claimed. Claimant did not receive this letter because the Department did not mail it to claimant's Eugene address.

(6) Claimant continued claiming each week, reporting that he was temporarily laid off, and receiving benefits. On November 16, 2022, the Department issued an administrative decision concluding that claimant had not actively sought work from October 30 through November 12, 2022 (weeks 44-22 through 45-22) and therefore was ineligible for benefits for those weeks. However, like the November 9, 2022 letter, the Department did not mail decision # 64354 to claimant's Eugene address.³

(7) On December 9, 2022, the Department mailed claimant decision # 94342, concluding that claimant failed to provide information in accordance with the Department's rules and was ineligible for benefits from November 20 through December 3, 2022 (weeks 47-22 through 48-22), and until the reason for the denial had ended. Claimant did not receive decision # 94342 because the Department did not mail it to claimant's Eugene address.

(8) Thereafter, claimant noticed that he was not receiving benefits when he claimed each week. On December 28, 2022, claimant called the Department and, on claimant's behalf, a Department

³ EAB has taken notice of these facts, which are contained in Employment Department records. OAR 471-041-0090(1). 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.

representative requested a hearing on the failure to provide information decision, decision # 94342. The representative did not request a hearing on claimant's behalf on the actively seeking work decision, decision # 64354. The Department representative also did not inform claimant that the Department believed he was required to actively seek work from prospective employers other than his regular employer each week.

CONCLUSIONS AND REASONS: Order No. 23-UI-215696 is reversed. Claimant did not fail to provide information in accordance with the Department's rules and was not ineligible for benefits 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. Such information may include, but is not limited to, information pertaining to . . . work seeking activity[.]* * *
- (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. Unless the time frame is otherwise defined under Employment Department statute or rule, or is specifically directed otherwise by an authorized representative of the Employment Department, the claimant is required to respond to all requests for information within the following time frames:
 - (a) For requests for information by letter mailed to the address of record, the claimant shall have five (5) calendar days to respond from the date the letter was mailed. When responding by mail, the date of the response shall be the date of the postmark affixed by the United States Postal Service. In the absence of a postmarked date, the date of the response shall be the most probable date of mailing as determined by the Employment Department.

* * *

The order under review concluded that claimant was ineligible for benefits from November 20 through December 31, 2022 (weeks 47-22 through 52-22) because he failed to establish that he actively sought work during those weeks. Order No. 23-UI-215696 at 4. In so doing, the order erred because it addressed an issue beyond the scope of the appeal.

Although the order under review cited to ORS 657.260 and OAR 471-030-0025, authorities that relate to the failure to provide information issue, the order's conclusion was premised on claimant failing to establish that he actively sought work. Order No. 23-UI-215696 at 4. This is apparent because the order stated that claimant was "unable to provide any record of his work search activity despite the ALJ's request," and stated further that it found persuasive claimant's responses on his weekly certification

forms that he was making contact with his regular employer only, instead of doing a broader search for work. Order No. 23-UI-215696 at 4.

The order erred in treating the matter on appeal as an actively seeking work case rather than as a failure to provide information case because doing so exceeded the scope of the issues indicated on the notice of hearing. *See* EAB Exhibit 2 at 1. Expanding the scope of review to include the actively seeking work issue was improper because claimant was not on notice that the issue would be addressed at hearing and did not waive his right to notice.

Neither decision # 94342 nor the notice of hearing in this case put claimant on notice that the actively seeking work issue would be addressed at hearing. Nothing stated in decision # 94342 could have put claimant on notice that the actively seeking work issue would be considered at hearing given that claimant did not receive decision # 94342 and only appealed the decision when a Department representative requested a hearing on his behalf during a call claimant made to inquire about why he was not receiving benefits. However, even if claimant had received decision # 94342, the findings and legal conclusion of the administrative decision relate only to the failure to provide information issue. EAB Exhibit 1 at 1. Decision # 94342 cited to ORS 657.155, which is the statute that contains the actively seeking work requirement, as a basis for its conclusion. EAB Exhibit 1 at 2. However, that citation alone was not sufficient to give claimant reasonable notice that the actively seeking work issue might be raised at hearing.

ORS 657.155 also contains several other bases for determining eligibility, such as subpart (1)(b), which requires an individual to make their claim “in accordance with ORS 657.260.” ORS 657.260, in turn, requires claims for benefits to be filed in accordance with the Department’s rules, including OAR 471-030-0025, the rule that requires claimants to furnish information, when requested, within certain prescribed timeframes. Accordingly, the administrative decision’s citation to ORS 657.155 was intended to relate to the failure to provide information issue, and would not have put claimant on notice that the actively seeking work issue was implicated.

Similarly, the notice of hearing makes no mention of the actively seeking work issue and states merely that the issue to be considered, other than jurisdictional matters, is “[w]hether claimant failed to furnish information in accordance with prescribed rules,” citing to ORS 657.155, 657.260, and OAR 471-030-0025. EAB Exhibit 2 at 1. These citations relate to the failure to provide information issue, not the actively seeking work issue. Under OAR 471-040-0025(8) (August 1, 2004), issues not previously considered may not be addressed at hearing unless the ALJ affords the parties an opportunity to object. OAR 471-040-0025(8) also states that “in no event shall the administrative law judge accept jurisdiction of a new issue and proceed with hearing on such issue when an interested party to such new issue has not waived right to notice.” There is no indication from the record that claimant waived his right to notice of the actively seeking work issue, or that he was afforded an opportunity to object to the ALJ reaching the issue.

Note that on November 16, 2022, the Department issued an administrative decision on the actively seeking work issue. That administrative decision, # 64354, concluded that claimant had not actively sought work from October 30 through November 12, 2022 (weeks 44-22 through 45-22) and was ineligible for benefits for those weeks. However, the Department did not mail decision # 64354 to claimant’s address in Eugene. As a result, claimant may be unaware of that decision, given that the

Department's witness mentioned the existence of the decision during the hearing in this case only in passing. *See* Audio Record at 14:48. Claimant may wish to file a late request for hearing on decision # 64354.

Turning to the failure to provide information issue, the record shows that in October 2022, claimant moved from his residence in Springfield, Oregon to a new address in Eugene, Oregon. At hearing, claimant testified that at the end of October 2022, he attempted to update his address with the Department by entering his Eugene address into his iMatchskills profile and into the Department's online claims system accessible through the Department's "Oregon.gov" website. Audio Record at 21:57 to 22:24. This testimony was un rebutted at hearing. Accordingly, more likely than not, claimant's address of record with the Department as of the end of October 2022 was his Eugene address.

Despite this, the November 9, 2022 letter requesting claimant to furnish information was not mailed to claimant's Eugene address and, as a result, claimant did not receive it. OAR 471-030-0025(2) requires a claimant to furnish information by responding to a request for information within certain prescribed timeframes. However, where the request for information is not received because it is not mailed to a claimant's address of record, a request for information within the meaning of the rule has not been made. Because the Department failed to make a valid request for information, claimant had no duty under the rule to furnish the information to the Department. As a result, claimant did not fail to provide information in accordance with the Department's rules. Because claimant did not fail to provide information in accordance with the Department's rules, he is not ineligible to receive benefits on that basis.

Decision # 94342 specifically mentioned only the weeks from November 20 through December 3, 2022 (weeks 47-22 through 48-22) as claimant's weeks of ineligibility. EAB Exhibit 1 at 1. However, the ALJ extended that period to include the weeks from December 4 through 31, 2022 (weeks 49-22 through 52-22), and did so without requesting consent to take jurisdiction over the additional weeks. The appropriate practice is to give the parties an opportunity to object to taking jurisdiction over additional weeks of benefits. In any event, because claimant did not fail to provide information in accordance with the Department's rules, he is not ineligible to receive benefits on that basis for any of the weeks addressed in the ALJ's order.

For these reasons, claimant did not fail to provide information in accordance with the Department's rules and is not ineligible for benefits for weeks 47-22 through 52-22 on that basis.

DECISION: Order No. 23-UI-215696 is set aside, as outlined above.

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

DATE of Service: April 13, 2023

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 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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