

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0279**

*Reversed*  
*Eligible Weeks 21-21 through 33-21*

**PROCEDURAL HISTORY:** On October 8, 2021, 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 to receive unemployment insurance benefits for the weeks including May 23, 2021 through August 21, 2021 (weeks 21-21 through 33-21) and until the reason for the denial ended (decision # 63759). Claimant filed a timely request for hearing. On February 14, 2023, ALJ Goodrich conducted a hearing, and on February 17, 2023 issued Order No. 23-UI-216555, affirming decision # 63759. On March 3, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) On November 3, 2020, claimant filed an initial claim for unemployment insurance benefits. Claimant subsequently claimed benefits for the weeks including May 23, 2021 through August 21, 2021 (weeks 21-21 through 33-21). These are the weeks at issue. The Department paid claimant benefits for the weeks at issue.

(2) After claiming benefits for week 33-21, claimant stopped claiming benefits, and did not do so again until January 2022 when she filed a new initial claim for a new benefit year.<sup>1</sup>

(3) On October 4, 2021, one of the Department's adjudicators called claimant in an attempt to obtain information about an employer that claimant had previously worked for. Claimant was unable to answer the call, so the adjudicator left claimant a voicemail requesting a call back within 48 hours. Claimant received the voicemail but did not call back, as she had recently started a demanding new job, and understood from previous experience that a call to the Department could involve spending a long time on hold. Based on the contents of the adjudicator's voicemail, claimant was not aware of the reason for the call or the consequences of failing to respond to the call.

<sup>1</sup> EAB has taken notice of these facts, which are 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.

(4) In or around early February 2023, claimant spoke to a different Department representative about the matter and provided the information the adjudicator sought in October 2021.

**CONCLUSIONS AND REASONS:** Claimant did not fail to provide information in accordance with the Department's rules and therefore was eligible to receive benefits during the weeks at issue.

Under ORS 657.155(1)(b), an unemployed individual shall be eligible to receive benefits with respect to any week only if the Department finds that the individual has made a claim for benefits with respect to such week in accordance with ORS 657.260. Under ORS 657.260(1), claims for benefits shall be filed in accordance with such regulations as the Director of the Employment Department may prescribe.

OAR 471-030-0025 (January 11, 2018) provides:

(1) With all claims, an individual shall furnish the Director with their social security number and other information required for processing their claim. Such information may include, but is not limited to, information pertaining to prior work history, separations from work, current work activity and earnings, licenses or permits held, self-employment, entitlement to pay and allowances of various kinds, work seeking activity, working restrictions, and working ability. With respect to work activity or self-employment during any week claimed, the information required may include the type of work activity, the amount of time devoted to such activity, the gross and net amount of compensation, remuneration, wages, commission, salary, or income, if any, received or expected to be received, and any other factors material to a determination of eligibility for benefits.

(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:

\* \* \*

(b) For requests for information by telephone message, fax, email, or other electronic means, the claimant shall have 48 hours to respond.

The order under review concluded that claimant failed to provide requested information needed to process her claim, and was therefore ineligible to receive benefits during the weeks at issue, because she did not respond within 48 hours to the October 4, 2021 voicemail left for her by a Department adjudicator. Order No. 23-UI-216555 at 3. The record does not support this conclusion.

First, the dates of ineligibility determined by decision # 63759, affirmed by the order under review, do not correctly relate to the period of time in which claimant was required to respond to the Department's voicemail. Under ORS 657.155(1)(b), for any week of benefits claimed an individual may only be eligible for benefits if they have filed their claim in accordance with ORS 657.260. In turn, 657.260(1)

requires that individuals file claims in accordance with regulations promulgated by the Department. Those rules include OAR 471-030-0025, which require under paragraph (1) that a claimant furnish to the Department “information required for processing their claim.” Under paragraph (2) of that rule, a claimant is required to furnish such information to the Department within the timeframes outlined in the rule. If the information is requested by a “telephone message” the individual has 48 hours to respond to the message and provide the requested information. OAR 471-030-0025(2)(b).

Claimant did not respond to the Department’s voicemail within 48 hours. Therefore, if the Department’s voicemail constituted a request for information necessary to process claimant’s claim, claimant did not furnish the required information in accordance with the Department’s rules. Eligibility for benefits under ORS 657.155(1)(b) is determined on a week-by-week basis by examining whether, for any particular week claimed, the claimant filed claims in accordance with the Department’s rules. The requirements of OAR 471-030-0025 are implementations, by way of ORS 657.260, of the general requirements found under ORS 657.155(1)(b). Therefore, any failure to furnish information to the Department as required under OAR 471-030-0025 must also be considered on a week-by-week basis, and any determination of ineligibility applied accordingly. In other words, the day on which the actual breach occurs is the first day on which the individual has failed to file a claim (if any) in accordance with the Department’s rules.

Here, claimant’s response to the adjudicator was required by October 6, 2021, which was 48 hours after the voicemail was left for her on October 4, 2021. Because claimant did not respond by that time, claimant was potentially in breach of the Department’s rules as of that date (which fell within week 40-21). Therefore, any claims she filed for that week would not have been in accordance with ORS 657.260. However, claimant stopped claiming benefits as of week 33-21. The record does not show that claimant failed to respond to a request for information, or otherwise failed to file claims in accordance with ORS 657.260, during any of the weeks at issue or any week prior to 40-21. As a result, claimant was not ineligible for benefits during the weeks at issue on that basis.

Even if claimant had filed a claim for week 40-21, however, the Department has not met its burden to show that claimant should have been ineligible for benefits under OAR 471-030-0025 because the record does not show, by a preponderance of the evidence, that the Department actually requested the information from claimant.<sup>2</sup> The Department’s witness at hearing was not the author of decision # 63759 and did not offer evidence regarding what the adjudicator stated in the voicemail left for claimant. Instead, the Department’s witness testified that, by practice, Department adjudicators state in such voicemails to “please return the call by this time on this date, or we will make a decision based on available information.” Audio Record at 9:46. By contrast, claimant testified that she only recalled the adjudicator having indicated in the voicemail that a call back was requested within 48 hours, and that the adjudicator left no other information in the voicemail. Audio Record at 13:17. Because claimant’s testimony relates to the actual voicemail in question, as opposed to speculative testimony regarding what similar voicemails typically contain, claimant’s account is afforded more weight. Accordingly, the record shows that, more likely than not, the voicemail did not contain a statement that claimant’s failure to respond within 48 hours would result in a decision being made that could affect her eligibility for benefits.

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<sup>2</sup> *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).

Further, the voicemail left for claimant cannot meaningfully be said to be a “request[] for information” under OAR 471-030-0025(2). There is no indication that the Department notified claimant that they were requesting information from her, or that she was required to provide it. Because the record does not show that the Department made such a request, claimant could not have failed to fulfill it. Therefore, a conclusion that claimant failed to furnish information requested by the Department is not supported by substantial evidence.

For the above reasons, claimant did not fail to furnish information requested by the Department during the weeks at issue, and is therefore not ineligible to receive unemployment insurance benefits on that basis.

**DECISION:** Order No. 23-UI-216555 is set aside, as outlined above.

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

**DATE of Service:** April 14, 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](https://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.

**Employment Appeals Board - 875 Union Street NE | Salem, OR 97311**  
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711  
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