

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0306

Reversed

Eligible Weeks 14-20 through 24-20, 26-20, 28-20 through 29-20, and 31-20 through 02-21

PROCEDURAL HISTORY: On April 14, 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 March 29, 2020 through January 16, 2021 (weeks 14-20 through 02-21) and until the reason for the denial had ended (decision # 114612). Claimant filed a timely request for hearing. On February 14, 2023, ALJ Frank conducted a hearing at which the Department failed to appear, and on February 22, 2023 issued Order No. 23-UI-216866, modifying decision # 114612 by concluding that claimant failed to provide information in accordance with the Department's rules and therefore was ineligible to receive benefits for the weeks including March 29, 2020 through June 13, 2020 (weeks 14-20 through 24-20), June 21, 2020 through June 27, 2020 (week 26-20), July 5, 2020 through July 18, 2020 (weeks 28-20 through 29-20) and July 26, 2020 through January 16, 2021 (weeks 31-20 through 02-21). On March 14, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On March 31, 2020, claimant filed an initial claim for unemployment insurance benefits.¹

(2) Claimant subsequently claimed benefits for the weeks including March 29, 2020 through June 13, 2020 (weeks 14-20 through 24-20), June 21, 2020 through June 27, 2020 (week 26-20), July 5, 2020

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.

through July 18, 2020 (weeks 28-20 through 29-20) and July 26, 2020 through January 16, 2021 (weeks 31-20 through 02-21). These are the weeks at issue. The Department paid claimant benefits for all of the weeks at issue except for the weeks including December 20, 2020 through January 16, 2021 (weeks 52-20 through 02-21).²

(3) On February 5, 2021, after speaking to an employee at a WorkSource office, claimant submitted information to that employee regarding her employment history and earnings information. The employee asked claimant to submit the information because it had been requested by a “lady that reached out to [claimant] that was working on [claimant’s] case.” Audio Record at 30:30.

(4) On or around February 17, 2021, the Department mailed claimant a letter requesting information regarding her employment history and earnings information. The letter indicated that claimant was required to furnish the information by February 22, 2021. Claimant received the letter.

(5) Claimant later re-submitted at least some of the requested information to the Department. This information included dates on which she worked and wages she earned during most of the weeks at issue. Many of the date ranges that claimant included in that information did not correspond to the Sunday-through-Saturday weeks that the Department uses for weekly claims.³

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, if otherwise eligible.

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

² 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.

³ “A ‘week’ as defined in subsection (10) of ORS 657.010 shall end on Saturday except that where an individual is attached to a regular employer a week may consist of any seven consecutive days approved by the Director. The provisions of this section shall not be construed to allow benefits for a period of less than seven days or for the same period more than once.” OAR 471-030-0005(1) (January 11, 2018).

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:

* * *

(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.

When the Department determines that a claimant has not provided requested information necessary to process their claim, the Department calculates the start date of the resultant ineligibility for benefits according to the following guidelines:

1. For issues discovered at the initial, additional and reopen claim, start failure to provide decisions with the week for which we needed the missing information, e.g., the week of the IC, AC, or RO.⁴
2. For issues arising during the continued claim series after the weeks have been paid or credited, start the decision with the week the requested information is due.
3. For issues arising during the continued claim series when the weeks have not been paid or credited, start the decision with the week for which we needed the missing information. * * *

Oregon Employment Department, UI Benefit Manual § 255 (Rev. 09/11/07).

In February 2021, the Department mailed claimant a letter requesting that she provide information by February 22, 2021. Because the Department neither appeared for the hearing, nor submitted a copy of the letter into the hearing record, the record does not specifically show what information was requested, although claimant's testimony and documentary evidence suggests that it related to her employment and earnings information. The record does show that claimant submitted at least *some* information in response to the request, but it is unclear both as to whether claimant submitted *all* of the requested information and whether she did so on or prior to February 22, 2021. Nevertheless, the order under

⁴ "IC," "AC," and "RO" refer to Initial, Additional, and Reopened claims, respectively. See OAR 471-030-0040 (January 11, 2018).

review concluded that “it remains more likely than not that claimant still has not filed her claim in accordance with regulations” because the information she provided was incomplete. Order No. 23-UI-216866 at 3. The record does not support this conclusion.

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 letter mailed to the address of record, the individual has five days to respond to the letter and provide the requested information. OAR 471-030-0025(2)(a).

Because the record does not show precisely what information the Department requested in the letter, the Department failed to show that claimant did not provide it by the deadline indicated in the letter of February 22, 2021. Even assuming that claimant did not provide the information by that deadline, however, the applicable rules and the Department’s guidance regarding those rules do not support a denial of benefits for the weeks at issue.

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.

Under Department guidance, the date on which ineligibility due to a failure to provide information should start depends both on when the issue was discovered (i.e., when the Department first became aware of the need for information) and whether the weeks in question were paid. Here, the record contains no evidence regarding when the need for the requested information was discovered. Given that the information was requested nearly a year after claimant filed her initial claim, and the fact that the record also fails to show that she filed an additional claim or reopened claim during the period at issue, it is reasonable to infer that, more likely than not, the issue was discovered during the continued claim series (i.e., as the result of claimant having filed a weekly claim).

Here, claimant’s response to the Department was required by February 22, 2021 (week 08-21). Assuming that claimant did not sufficiently respond to the request for information by that date, OAR 471-030-0025 and the Department’s guidance, above, require that any resulting denial of benefits for weeks already paid begin as of the week the information was *due*, which was week 08-21. In regards to weeks of benefits claimed but not paid, any resulting denial of benefits must begin as of the week in which the information was *needed*—i.e., when it first became apparent to the Department that they were missing information. As explained above, however, this information is not in the record. The earliest date in the record on which it can be shown that the Department was seeking information from claimant was February 5, 2021 (week 05-21), the date on which claimant initially submitted information to a WorkSource employee.

In sum, assuming that claimant failed to submit the requested information by February 22, 2021, a denial of benefits for weeks that had already been paid would begin as of week 08-21, and a denial of benefits for weeks that had not been paid would begin as of week 05-21. Those weeks are not at issue here, as the record only indicates that claimant claimed benefits through week 02-21.

Therefore, for the weeks at issue, claimant did not fail to furnish information requested by the Department, and is not ineligible to receive unemployment insurance benefits on that basis.

DECISION: Order No. 23-UI-216866 is set aside, as outlined above.

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

DATE of Service: April 21, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



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
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