

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0365

Reversed & Remanded

PROCEDURAL HISTORY: On December 21, 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 from December 4 through 17, 2022 (weeks 49-22 through 50-22) and until the reason for the denial had ended (decision # 104233). Claimant filed a timely request for hearing. On March 15, 2023, ALJ Logan conducted a hearing, and on March 22, 2023 issued Order No. 23-UI-219759, affirming decision # 104233. On March 24, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On October 17, 2022, claimant filed an initial claim for unemployment insurance benefits. Claimant subsequently claimed benefits for weeks 49-22 and 50-22, the weeks at issue. The Department did not pay claimant benefits for the weeks at issue.¹

(2) Claimant indicated on his initial claim that he had been furloughed from his regular employer and, sometime later, informed the Department that his return to work date had been pushed back to week 49-22. When claimant subsequently claimed benefits for week 49-22, claimant did not report earnings or hours worked for that week. Because the Department expected claimant to have returned to work that week, it sent claimant a letter on December 14, 2022 requesting information on the expected return to work and any earnings he had during the week. The letter indicated that claimant's response was due by December 20, 2022.

(3) On December 21, 2022, the adjudicator who reviewed claimant's file and issued decision # 104233 reviewed the Department's imaging system prior to issuing the decision, and claimant's response was not in the Department's system at that point. Later on December 21, 2022, after decision # 104233 had been issued, claimant's response to the December 14, 2022 letter appeared in the Department's imaging system.

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.

CONCLUSIONS AND REASONS: Order No. 23-UI-219759 is set aside and this matter remanded for further development of the record.

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:

(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.

* * *

On December 14, 2022, the Department mailed claimant a letter requesting that he provide information by December 20, 2022. Before issuing decision # 104233, the adjudicator who issued the decision reviewed the Department's imaging system on December 21, 2022 and did not find a response from claimant as of that date, suggesting that claimant may not have responded by December 20, 2022. However, at hearing, the Department's witness indicated that claimant had in fact submitted a response to the letter that appeared in the Department's imaging system on December 21, 2022 after decision # 104233 had been issued. Audio record at 7:55. Based on this, the order under review found that "on December 21, 2022, claimant submitted his response to the Department's inquiry," and on that basis

concluded that claimant failed to furnish the information requested by the deadline indicated in the letter. Order No. 23-UI-219759 at 1–2. The record as developed does not support this conclusion or the finding upon which it was based because it is not clear from the record when claimant actually submitted his response or by what means.

Under OAR 471-030-0025(2)(a), the date of a mailed response to a mailed letter requesting information is the date the mailed response was postmarked or, in the absence of a postmark, the most probable date of mailing. Thus, if claimant mailed his response to the December 14, 2022 letter and the Department received it on or before December 21, 2022, it is unlikely that claimant mailed it on December 21, 2022, and his response may therefore have been timely. On remand, the ALJ should inquire as to the method by which claimant responded to the letter and the date on which he did so in order to determine whether claimant complied with the requirements of OAR 471-030-0025(2)(a).

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary for a determination of whether claimant submitted the requested information to the Department by December 20, 2022 and by what means, Order No. 23-UI-219759 is reversed, and this matter is remanded.

DECISION: Order No. 23-UI-219759 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: May 4, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-219759 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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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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