

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0376

Reversed
Eligible Week 52-22

PROCEDURAL HISTORY: On January 18, 2023, 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 week of December 25, 2022 through December 31, 2022 (week 52-22). Claimant filed a timely request for hearing. On March 9, 2023, ALJ Lewis conducted a hearing, and on March 10, 2023 issued Order No. 23-UI-218626, affirming the January 18, 2023 administrative decision. On March 30, 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 her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), 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.

FINDINGS OF FACT: (1) On October 3, 2022, claimant filed an initial claim for unemployment insurance benefits. Claimant subsequently claimed benefits for week 52-22. This is the sole week at issue. The Department did not pay claimant benefits for the week at issue.

(2) Prior to filing her weekly claim for the week at issue, claimant provided the Department with information that led them to expect that she would be working, and earning wages, during the week at issue. When claimant filed her weekly claim for the week at issue, claimant did not report any hours or earnings for the week because she had not actually worked that week.

(3) On January 10, 2023, the Department sent claimant a letter to her address of record, requesting that claimant provide information regarding any hours worked, and wages earned, during the week at issue. The letter indicated that claimant was required to provide the information by January 15, 2023. The letter was not returned to the Department as undeliverable.

(4) Claimant had a locking mailbox which she checked every few days. Claimant did not change her address at any point during the period of time relevant to this decision. Nevertheless, claimant never received the January 10, 2023 letter, and as a result did not know to provide the requested information to the Department by January 15, 2023.

(5) On January 22, 2023, claimant received a copy of the January 18, 2023 administrative decision. On January 27, 2023, claimant contacted the Department by telephone and informed them that she had not worked any hours or earned any wages during the week at issue. This was the first date on which claimant was able to call the Department because, prior to that date, she worked during the hours that the Department's telephones were open, and did not have cellular reception where she worked.

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 week at issue, if otherwise eligible.

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 January 10, 2023, the Department mailed claimant a letter requesting that she provide information by January 15, 2023. Claimant did not receive the letter. The order under review also found claimant that

did not receive the letter. Order No. 23-UI-218626 at 1. Nevertheless, the order under review concluded that claimant's testimony that she did not receive the letter was insufficient to overcome the presumption that she had received it because the letter was not returned as undeliverable and the Department's witness "testified as to the specific date that the document was mailed to claimant[.]" Order No. 23-UI-218626 at 2. The record does not support this conclusion.

Under ORS 40.135(1)(q), there is a presumption that a letter duly directed and mailed was received in the regular course of the mail. The record contains evidence sufficient to rebut the presumption that claimant received the letter in the regular course of the mail because claimant testified under oath that she did not receive it. Audio Record at 13:33.

There is no first-hand evidence in the record to show that the letter was ever delivered to claimant, and claimant's testimony that it was not delivered is the only first-hand evidence that speaks to that point. By contrast, the fact that the letter was mailed to claimant's address of record and was not returned as undeliverable is circumstantial evidence. While this evidence could support a finding that claimant received the letter, it is outweighed by claimant's direct testimony that she did not receive it. Therefore, the record shows that claimant did not receive the letter, and the facts have been found accordingly.

In circumstances where the Department requests information by letter, OAR 471-030-0025(2)(a) requires that a claimant provide the information within five days of the date on which the letter was mailed. However, implicit in that provision of the rule is the requirement that the request actually be delivered in order to give claimant notice that a response was required. Claimant never received the letter, and the record does not show that she was aware of the Department's need for the requested information until she received the January 18, 2023 administrative decision on January 22, 2023. Equity therefore dictates that claimant should not be denied benefits for failing to timely respond to a letter that she did not receive and had no reason to know about. Furthermore, the record shows that claimant was unable to contact the Department to provide the information until January 27, 2023. At that point, claimant contacted the Department to provide the information.

For the above reasons, claimant is not denied benefits for the week at issue.

DECISION: Order No. 23-UI-218626 is set aside, as outlined above.

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

DATE of Service: May 9, 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.

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 الاستئناف 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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