

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0850

Reversed & Remanded
Revocada y Remitida Para Otra Audiencia

PROCEDURAL HISTORY: On May 10, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant filed a late claim for unemployment insurance benefits for the week of April 2, 2023 through April 8, 2023 (week 14-23) and therefore was ineligible to receive benefits for that week (decision # 125826).¹ Claimant filed a timely request for hearing. On July 6, 2023, ALJ Lucas conducted a hearing that was interpreted in Spanish, and on July 14, 2023 issued Order No. 23-UI-230540, affirming decision # 125826. On July 27, 2023, the employer filed an application for review with the Employment Appeals Board (EAB).

HISTORIA PROCESAL: *El 10 de mayo de 2023, el Departamento de Empleo de Oregon (el Departamento) envió notificación de una decisión administrativa que concluye que el reclamante presentó un reclamo semanal tardío de beneficios de desempleo para la semana del 2 de abril de 2023 al 8 de abril de 2023 (semana 14-23) y, por lo tanto, no era elegible para recibir beneficios para esa semana (decisión # 125826).² El reclamante presentó una aplicación oportuna para una audiencia. El 6 de julio de 2023, el juez administrativo Lucas llevó a cabo una audiencia interpretada al español. El 14 de julio de 2023, el juez emitió la Orden Judicial No. 23-UI-230540, confirmando la decisión # 125826. El 27 de julio de 2023, el empleador archivó una aplicación para revisión de La Orden Judicial No. 23-UI-230540 con la Junta de Apelaciones de Empleo (EAB).*

¹ A second administrative decision with the same conclusion was later erroneously issued and subsequently vacated as duplicative of decision # 125826 by the Department. Transcript at 5. Claimant's request for hearing on the second decision was assigned Case No. 2023-UI-92983 by the Office of Administrative Hearings (OAH) and consolidated with the hearing on decision # 125826. It appears that thereafter OAH considered only decision # 125826 as the subject of claimant's appeal.

² *Una segunda decisión administrativa con la misma conclusión fue emitida posteriormente erróneamente y después anulada como duplicación de la decisión # 125826 por el Departamento. Transcripción en 5. La solicitud de audiencia del reclamante sobre la segunda decisión fue asignada al Caso No. 2023-UI-92983 por la Oficina de Audiencias Administrativas (OAH) y consolidada con la audiencia sobre la decisión # 125826. Parece que posteriormente OAH consideró sólo la decisión # 125826 como objeto de apelación del reclamante.*

WRITTEN ARGUMENT: The employer did not include a statement declaring that they provided a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). However, as the employer’s argument advocates for the reversal of decision # 125826 and the allowance of benefits to claimant, claimant cannot be strictly construed as an opposing party to the employer in this matter. Accordingly, EAB has considered the employer’s argument in reaching this decision.

ARGUMENTO POR ESCRITO: *El empleador no incluyó una declaración confirmando que el empleador le envió una copia a las otras partes de acuerdo con OAR 471-041-0080(2)(a) (13 de mayo de 2019). Sin embargo, como el argumento del empleador solicita la revocación de la decisión # 125826 y el pago de beneficios al reclamante, el reclamante no puede ser considerado exactamente como una parte contraria al empleador en este asunto. En consecuencia, EAB ha considerado el argumento del empleador para llegar a esta decisión.*

FINDINGS OF FACT: (1) Marquis Corp. employed claimant for a period including the week of April 2, 2023 through April 8, 2023.

(2) On January 5, 2023, claimant filed an initial claim for unemployment insurance benefits through the Work Share program.³ The Department determined that claimant established a valid claim through the Work Share program. Claimant and the employer entered into an agreement with the Department whereby both parties acknowledged that only the employer could submit a continuing weekly claim for benefits on claimant’s behalf, as required under Work Share rules.

(3) On approximately April 13, 2023, the employer intended to file a weekly claim for benefits for the week of April 2, 2023 through April 8, 2023 (week 14-23) on claimant’s behalf, and believed they had done so. Due to what was likely a clerical error by the employer, the Department did not receive the weekly claim, and the employer did not realize that it had not been received.

(4) On May 2, 2023, the employer filed the weekly claim for week 14-23 on claimant’s behalf after realizing that it had not been filed on April 13, 2023, as they had believed. The Department denied payment of the claim because it was filed late. Claimant filed a timely request for hearing.

(5) On July 14, 2023, the Office of Administrative Hearings (OAH) issued Order No. 23-UI-230540, affirming decision # 125826.

(6) The Department’s records appear to show that on July 25, 2023, a representative noted, “Vacate Dec # 125826- Issued In Error” on claimant’s account, and that on July 27, 2023, the Department paid the weekly claim for week 14-23.⁴

³ Work Share is a benefits program in which an employer reduces hours of work for their employees rather than lay them off and the employees experiencing a reduction in hours are allowed a percentage of their unemployment insurance benefits to replace a portion of their lost wages.

⁴ 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 facts will remain in the record.

CONCLUSIONS AND REASONS: Order No. 23-UI-230540 is set aside and the matter remanded for further development of the record.

CONCLUSIONES Y RAZONES: *La Orden No. 23-UI-230540 se pone a un lado, y esta materia se remite para desarrollar el expediente judicial.*

ORS 657.380 provides, in pertinent part:

* * *

(9) Continued claims for shared work benefits shall be completed by the shared work employer and submitted to the Employment Department no later than seven days following the end of the week for which benefits, waiting week credit, non-compensable credit week, or any combination of these is claimed. Shared work employees must provide the employer all information needed in order to submit a timely continued claim for shared work benefits. Such information may include, but is not limited to, information about work and earnings for another employer, missed opportunities to work, or other paid time used during the week being claimed.

ORS 657.267 provides:

(1) An authorized representative shall promptly examine each claim for waiting week credit or for benefits and, on the basis of the facts available, make a decision to allow or deny the claim. Information furnished by the claimant, the employer or the employer's agents on forms provided by the Employment Department pursuant to the authorized representative's examination must be accompanied by a signed statement that such information is true and correct to the best of the individual's knowledge. Notice of the decision need not be given to the claimant if the claim is allowed but, if the claim is denied, written notice must be given to the claimant. If the claim is denied, the written notice must include a statement of the reasons for denial, and if the claim is denied under any provision of ORS 657.176, the notice must also set forth the specific material facts obtained from the employer and the employer's agents that are used by the authorized representative to support the reasons of the denial. The written notice must state the reasons for the decision.

(2) If the claim is denied under any provision of ORS 657.176, written notice of the decision must be given to the employing unit, or to the agent of the employing unit, that, in the opinion of the Director of the Employment Department, is most directly involved with the facts and circumstances relating to the disqualification.

(3) Notice of a decision that was wholly or partially based on information filed with the director in writing within 10 days after the notice provided for in ORS 657.265 must be given to any employing unit or agent of the employing unit that filed the information.

EAB ha tomado aviso judicial de estos hechos, que son contenidos en los expedientes del Departamento. OAR 471-041-0090(1) (13 de mayo de 2019). Cualquier parte que se oponga que el EAB haya tomado aviso judicial sobre esa información tiene que someter su objeción a esta oficina por escrito, y tiene que incluir la base de su objeción, entre diez días de cuando esta decisión fue enviada. OAR 471-041-0090(2). A menos que su objeción sea recibida y afirmada, los hechos reconocidos permanecerán en el expediente.

(4) If a decision to allow payment made pursuant to this section does not require notice, that decision may be amended by an authorized representative. The amendment must be made by written notice informing the recipient of the right of appeal pursuant to ORS 657.269. The amendment must be issued within one year of the original decision to allow payment, except in cases of alleged willful misrepresentation or fraud. A decision requiring notice, made pursuant to this section, may be amended unless it has become a final decision under ORS 657.269.

ORS 657.270 provides, in relevant part:

* * *

(6) Except as provided in subsection (7) of this section, the decision of the administrative law judge is final unless the director or any other party to the hearing files an application for review with the Employment Appeals Board within 20 days after the delivery of the notice under subsection (4) of this section, or if mailed, within 20 days after the notice was mailed to the party's last-known address.

* * *

The order under review concluded that because the claim for week 14-23 was submitted to the Department more than seven days after the week was over, the claim was untimely and properly denied. Order No. 23-UI-230540 at 3. The record suggests that after the issuance of Order No. 23-UI-230540, and before the order became final, the Department amended decision # 125826 to allow the claim for week 14-23, potentially rendering moot claimant's request for hearing. Further development of the record is therefore needed to determine whether claimant's request for hearing continues to present a justiciable controversy.

The Department initially denied payment of the claim for week 14-23 because it was filed late, and pursuant to ORS 657.267(1), issued written notice of the denial in decision # 125826. At the hearing conducted July 6, 2023, the testimony of the Department's representative implied that decision # 125826 remained undisturbed. *See* Transcript at 5. However, on July 25, 2023, a Department representative appears to have noted on claimant's account that decision # 125826 was vacated. The Department's records also appear to show that on July 27, 2023, the Department paid claimant benefits for week 14-23. The order under review, which affirmed decision # 125826, had been issued on July 14, 2023, and therefore had not become final before these actions were taken by the Department. Accordingly, the Department was authorized under ORS 657.267(4) to amend decision # 125826 by allowing benefits for week 14-23 without issuing an additional written notice to the parties. If, as the record suggests, the Department took this course of action, claimant's request for hearing on decision # 125826 may no longer present a justiciable controversy. On remand, inquiry should be made as to whether decision # 125826 has been amended to allow claimant benefits and, if so, whether claimant's request for hearing on decision # 125826 is subject to dismissal as moot.

For these reasons, Order No. 23-UI-230540 is reversed and the matter remanded for further development of the record.

DECISION: Order No. 23-UI-230540 is set aside, and this matter remanded for further proceedings consistent with this order.

***DECISIÓN:** La Orden de la Audiencia 23-UI-230540 se pone a un lado, y esta materia se remite para otros procedimientos constantes con esta orden.*

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

DATE of Service: September 8, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-230540 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

***NOTA:** La falta de cualquier parte de presentarse a la audiencia sobre la remisión no reinstalará la Orden de la Audiencia No. 23-UI-230540 ni devolverá esta orden a la EAB. Solamente una aplicación oportuna para revisión de la orden subsiguiente de la nueva audiencia volverá este caso a la 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

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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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