

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0946

Modified
Request for Hearing Allowed
Ineligible Weeks 49-22 through 51-22
Eligible Weeks 52-22 through 01-23

PROCEDURAL HISTORY: On January 4, 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 was ineligible for benefits for the weeks from December 4 through 24, 2022 (weeks 49-22 through 51-22) and until the reason for the denial ended (decision # 614862). On January 24, 2023, decision # 614862 became final without claimant having filed a request for hearing. On February 24, 2023, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on July 6, 2023 issued Order No. 23-UI-229703, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by July 20, 2023.

On July 10, 2023, claimant filed a timely response to the appellant questionnaire. On July 19, 2023, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 23-UI-229703 was vacated and that a hearing would be scheduled to determine whether to allow claimant's late request for hearing and, if so, the merits of decision # 614862. On August 1, 2023, ALJ Ramey conducted a hearing, and on August 9, 2023 issued Order No. 23-UI-232776, concluding that claimant filed a timely request for hearing on decision # 614862, and modifying decision # 614862 by concluding that claimant had failed to provide information in accordance with the Department's rules and was ineligible for benefits for the weeks from December 4, 2022 through January 7, 2023 (weeks 49-22 through 51-22). On August 22, 2023, claimant filed an application for review of Order No. 23-UI-232776 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.

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the portion of the order under review allowing claimant's request for hearing is **adopted**. The remainder of this decision addresses claimant's eligibility for benefits during the weeks at issue.

FINDINGS OF FACT: (1) On December 2, 2022, claimant filed an initial claim for benefits. The first effective week of the claim was the week of November 27 through December 3, 2022 (week 48-22). Claimant did not claim the first effective week of her claim, but reopened her claim the following week and subsequently claimed benefits for weeks 49-22 through 01-23.¹ These are the weeks at issue. The Department did not pay claimant benefits for the weeks at issue.

(2) When claimant filed her initial claim, she was provided with a link that would allow her to complete a required identity verification process, administered at the time by a vendor called ID.me.

(3) On December 8, 2023, the Department mailed a letter to claimant advising her that she was required to complete the verification with ID.me within 10 days of the date of the letter, and that her benefits could be denied for every week she claimed until she completed the process. Exhibit 4 at 2. Claimant received this letter within approximately a week of its mailing date, read it, and was aware that she was required to complete the process by the deadline.

(4) After receiving the December 8, 2023 letter, claimant attempted to complete the ID.me process by herself by following the provided link and uploading photos of her driver's license and birth certificate as prompted. However, when the application prompted claimant to provide a photo of her face, claimant tried multiple times to provide such a photo, but the application repeatedly returned error messages regarding the photos she tried to submit. Claimant was not able to complete the process by herself at home.

(5) On December 29, 2022, claimant visited a WorkSource Oregon office to seek help in completing the Id.me process. A staff member there attempted to help claimant complete the process, but was not able to resolve the matter for claimant because the address on claimant's identification card did not match her address of record with the Department. The staffer told claimant that she would escalate the matter, but claimant never received any response from the WorkSource office. Claimant followed up with the WorkSource office via email on four occasions, but received no response. Claimant was not prevented from visiting a WorkSource office prior to her visit that day.

(6) Also on December 29, 2022, the Department ended its contract with ID.me.

(7) On January 9, 2023, claimant called the Department, and a representative advised her to visit a WorkSource office to complete her identification verification process. On January 10, 2023, claimant visited a different WorkSource office than the one she had visited previously. A note in the Department's claim system that day stated:

¹ 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.

COMPLETED MANUAL ID.ME FOR JS - REQUESTING REMOVAL OF DENIAL. SENT UP NV DL, WA BIRTH CERT, AND SSN CARD. DID NOT MAKE ADJUSTMENTS ON CLAIM DUE TO DENIAL. ATTACHED DOCUMENTS IN ONE PDF[.]²

CONCLUSIONS AND REASONS: Claimant failed to provide information in accordance with the Department's rules and therefore was ineligible for benefits for weeks 49-22 through 51-22. Claimant was eligible for benefits for weeks 52-22 through 01-23.

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.

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.

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.³
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).

The order under review concluded that claimant was not eligible for benefits during the weeks at issue because “[a]lthough claimant experienced issues with submitting the requested information online and through the WorkSource office, there is currently no ‘good cause’ exception to the requirement” that claimant complete her identity verification process.” Order No. 23-UI-232776 at 4. However, the record does not support this conclusion as to weeks 52-22 and 01-23.

Under OAR 471-030-0025, claimant was required to complete her identity verification process, via the ID.me application, within 10 days of the December 8, 2022 letter notifying her of the requirement, December 18, 2022. The record shows that claimant did not complete the identity verification process until January 10, 2023.⁴ The record also shows that while claimant made initial unsuccessful attempts to complete the process by the deadline, she was not prevented from visiting a WorkSource office or seeking other help in completing the process earlier than she did. Thus, by failing to complete the identity verification process by December 18, 2022, claimant failed to provide information required to process her claim.

Of note, under the Department’s guidance, above, claimant’s denial of benefits is effective the first effective week of her claim (week 48-22), as she was notified of the requirement when she filed her initial claim, and the information was therefore required that week. However, because claimant did not claim the first effective week of her claim, but instead reopened her claim the following week and began claiming benefits effective that week, week 49-22 is the appropriate week on which to begin the denial.

The above notwithstanding, it is not appropriate to deny claimant benefits for the remaining weeks at issue (weeks 52-22 and 01-23) because the Department ended its contract with the vendor ID.me during the middle of week 52-22, and the record does not show that claimant was given any notice of how else

³ “IC,” “AC,” and “RO” refer to Initial, Additional, and Reopened claims, respectively. *See* OAR 471-030-0040 (January 11, 2018).

⁴ The Department stated in its attestation that claimant “completed ID verification on January 13, 2023 at a local WorkSource Oregon office.” Exhibit 4 at 1. However, the Department’s own records contradict this assertion, as explained in the Findings of Fact, above.

she could complete the identity verification requirement once the Department had ended its vendor contract. While the record shows that claimant did eventually complete the process by visiting a second WorkSource office, it is not clear what was done differently in that instance, how claimant could have known what to do prior to that visit, or what she could have done to meet the identity verification requirement after the contract with ID.me ended.

Although OAR 471-030-0025 contains no good-cause exception for failing to provide information required by the Department, the Department must nevertheless comply with due process by providing individuals with the information necessary to fulfill its requirements. Because the Department appears to have failed to do so following the end of its contract with ID.me, claimant cannot be denied benefits for the weeks in which she neither knew nor had reason to know what she could do to complete the verification process. Therefore, claimant is not denied benefits for weeks 52-22 and 01-23.

DECISION: Order No. 23-UI-232776 is modified, as outlined above.

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

DATE of Service: October 5, 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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