

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1019

Modified
Eligible Week 25-23
Ineligible Weeks 26-23 through 27-23

PROCEDURAL HISTORY: On July 6, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant failed to register for work in accordance with the Department's rules and was ineligible benefits for the week of June 18 through 24, 2023 (week 25-23) and until the reason for the denial ended. Claimant filed a timely request for hearing. On August 28, 2023, ALJ Scott conducted a hearing, and on August 31, 2023 issued Order No. 23-UI-234840, modifying the July 6, 2023 administrative decision by concluding that claimant was ineligible for benefits for the weeks from June 18 through July 8, 2023 (weeks 25-23 through 27-23). On September 7, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On June 3, 2023, claimant filed an initial claim for unemployment insurance benefits via the Department's online claims system. Claimant claimed benefits for the weeks from June 18 through July 8, 2023 (weeks 25-23 through 27-23). These are the weeks at issue. The Department did not pay claimant benefits for the weeks at issue.

(2) When an individual files an initial claim via the Department's online claims system, they read and certify to the following, in relevant part: "You must begin looking for work immediately... you are required to register for work in our iMatchSkills system. You will receive a letter in a few days (UI Pub 277) advising you how to register – It is very important that you read it and follow the instructions. To receive benefits you must register with the Employment Department iMatchSkills system and visit your WorkSource center to complete the welcome process or you may be denied benefits." Exhibit 1 at 2. Claimant read this information when she filed her initial claim.

(3) On June 9, 2023, the Department mailed UI Pub 277 to claimant's address of record, advising claimant of her need to register for work and explaining how to do so. The mailing advised claimant that she was required to complete the process by June 23, 2023. Claimant never received this mailing.

(4) Claimant was out of the country from June 10 through 22, 2023.

(5) On June 27, 2023, after claimant claimed benefits for the week of June 18 through 24, 2023 (week 25-23), the Department mailed claimant a letter advising her that they could not pay her benefits for that week because she had not yet completed the registration process. Claimant received this letter. However, because she had received her first check for benefits the same day, she assumed that the letter had been sent in error, and therefore did not respond to it or take any further action.

(6) On July 3, 2023, after claimant claimed benefits for the week of June 25 through July 1, 2023 (week 26-23), the Department mailed claimant a letter advising her that they could not pay her benefits for that week because she had not yet completed the registration process. Claimant received this letter. On the same day that she received the letter, claimant contacted a WorkSource Oregon office to schedule an appointment to complete the registration process. The earliest date available was July 12, 2023. On July 12, 2023, claimant completed the registration requirements.

CONCLUSIONS AND REASONS: Claimant failed to register for work in accordance with the Department’s rules and therefore is ineligible for benefits for the weeks from June 25 through July 8, 2023 (weeks 26-23 and 27-23). However, claimant did not have adequate notice of the registration requirements prior to week 26-23, and therefore is eligible for benefits for the week of June 18 through 24, 2023 (week 25-23).

ORS 657.155(1)(a) states that an individual shall only be eligible to receive benefits with respect to any week if “[t]he individual has registered for work at and thereafter has continued to report at an employment office in accordance with” the Department’s rules. ORS 657.159 states that to satisfy the registration requirement of ORS 657.155(1) an individual shall submit such information regarding the individual’s job qualifications, training and experience as the Department requests.

OAR 471-030-0035 (January 11, 2018) provides, in part:

(1) A claimant may fulfill the “registered for work” requirements of ORS 657.155(1)(a) by completion of such processes as directed by the Director in order to create a full registration for work.

(2) “Full registration for work” as used in this rule, means providing information regarding the individual's job qualifications, skills, training and experience as the Director or an authorized representative of the Director deems necessary to carry out job placement services for the individual.

* * *

OAR 471-020-0020(1)(a) (August 8, 2004) provides, in relevant part, that except for individuals identified in OAR 471-020-0021 (January 8, 2006), all unemployment insurance claimants shall submit such information as may be required by the Oregon Employment Department to carry out job placement services for the individual including, but not limited to, the individual's job qualifications, training and experience. Such information shall be entered into the Business & Employment Services online job match system concurrent with, or as soon as possible following, the filing of an initial claim for unemployment insurance benefits. Entry of this information shall constitute enrollment.

OAR 471-020-0021 (January 8, 2006) provides that the following unemployment insurance claimants are not required to submit registration information to the Employment Department for job placement purposes:

- (1) Individuals claiming benefits as interstate liable claimants against the State of Oregon;
- (2) Individuals on a temporary mass layoff from a single employer.
- (3) Individuals claiming benefits through an approved shared work plan under the provisions of ORS 657.380;
- (4) Individuals claiming benefits for partial unemployment under the provisions of OAR 471-030-0060; and
- (5) Individuals who are members in good standing of a union that does not allow members to seek non-union work.

OAR 471-030-0060(1) (January 11, 2018) provides that a partially unemployed individual is one who:

- (a) Has been working full time and remains attached to their usual and regular employer; and
- (b) Now works some but less than their customary full time hours for such employer because of a lack of full time work;
- (c) Has earnings less than their weekly benefit amount; and
- (d) Expects to return to full time work for such employer.

The Department denied claimant benefits for the weeks at issue because she did not complete her iMatchSkills registration or the Department's welcome process prior to the deadline of June 23, 2023. Claimant's circumstances did not qualify her for any of the exceptions to the registration requirements found under OAR 471-020-0021. The order under review concluded that while claimant did not receive the Publication 277 mailed to her on June 9, 2023 because she was out of the country from June 10, 2023 until June 22, 2023, "it is extremely unlikely that [claimant] would have been able to timely comply" with the registration deadline of June 23, 2023 even if she had received the mailing upon her return. Order No. 23-UI-234840 at 4. The order under review further invoked the presumption under ORS 40.135(1)(a) as applicable to claimant's circumstances,¹ reasoning that "[t]he ordinary consequence of claimant's voluntary act to leave the country while she had an active and newly-initiated claim for unemployment insurance benefits in process is obviously, that benefits were denied, due to her inability to comply with benefits-related requirements during her absence. Therefore, claimant is not entitled to receive unemployment insurance benefits for any of the weeks at issue." Order No. 23-UI-234840 at 4. The above reasoning does not support the conclusion that claimant was not eligible for benefits for the weeks at issue.

¹ A person intends the ordinary consequences of a voluntary act. ORS 40.135(1)(a).

By suggesting that claimant would have likely been unable to complete the required registration process by the deadline of June 23, 2023 had Publication 277 actually been delivered to claimant's address, the order under review substitutes an analysis of the facts in the record for a hypothetical set of facts that did not actually occur, and apparently bases its ultimate conclusion on these hypothetical facts. This is error. Under OAR 471-040-0025(1) (August 1, 2004), "[t]he purpose of the hearing is to inquire fully into the matters at issue and to make a decision **on the basis of the evidence adduced at the hearing.**" (emphasis added). Under OAR 471-040-0025(6), "[a]ll evidence shall be offered and made a part of the record in the case, and except for matters stipulated to and except for notice taken, **no other factual information or evidence shall be considered by the administrative law judge in making the decision.**" (emphasis added). Thus, to the extent that the order under review based its conclusion that claimant was ineligible for benefits during the weeks at issue on a hypothetical set of facts rather than the evidence adduced at hearing, that conclusion is not supported by the record.

The order under review also misrelies on ORS 40.135(1)(a) in concluding that claimant was not eligible for benefits for the weeks at issue. Even assuming that the "ordinary consequences" of claimant's decision to leave the country shortly after filing her initial claim is for her benefits to be denied, whether or not she intended those consequences is not relevant to the question of whether her benefits *should* be denied for the weeks at issue. Instead, the applicable administrative rules, as cited above, set the requirements for eligibility in this regard. None of those rules include elements regarding an individual's specific state of mind, and a factual presumption which purports to represent claimant's state of mind therefore is inapplicable to this analysis.

Under OAR 471-030-0035, "[a] claimant may fulfill the "registered for work" requirements of ORS 657.155(1)(a) by completion of such processes as directed by the Director in order to create a full registration for work." The record shows that claimant first received notice of the fact that she would be required to register for work and complete the Department's "welcome process" when she filed her initial claim on June 3, 2023. However, that notice specifically stated that claimant would "receive a letter in a few days (UI Pub 277) advising [her] how to register." Exhibit 1 at 2. Claimant did not receive that letter. Because claimant did not receive the Publication 277, advising her of how to register and when the deadline was, the Department did not immediately advise her of what she was required to do "in order to create a full registration for work," and she therefore did not fail to follow those directions through week 25-23. Claimant therefore is eligible for benefits for week 25-23, if otherwise eligible.²

However, the record shows that claimant *did* receive notice of the registration requirements when she received the June 27, 2023 letter, and that she did not immediately move to complete the requirements because her receipt of a benefits check that day led her to believe that she was not required to do so. While claimant's confusion is understandable, the applicable rules do not contain any exceptions relating to a misunderstanding of the registration requirements. After having received another letter advising her of the requirements, claimant contacted the Department and ultimately completed the registration requirements on July 12, 2023, which was outside of the remaining weeks at issue (weeks 26-23 and 27-23). Because claimant failed to register for work in accordance with the Department's

² The record suggests that claimant was found to be ineligible for benefits for week 25-23 due to her having been out of the country. Such an issue is outside the scope of this decision, however.

rules after having received notice of those requirements, she is not eligible for benefits for weeks 26-23 and 27-23.

DECISION: Order No. 23-UI-234840 is modified, as outlined above.

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

DATE of Service: October 17, 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.

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.

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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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
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