

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1044

Reversed
Eligible Weeks 31-23 through 32-23

PROCEDURAL HISTORY: On August 15, 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 therefore ineligible to receive unemployment insurance benefits for the week of July 30, 2023, through August 5, 2023 (week 31-23) and until the reason for the denial ended (decision # 101129). Claimant filed a timely request for hearing. On September 1, 2023, ALJ Logan conducted a hearing at which the Department submitted an Attestation in lieu of attending, and on September 8, 2023 issued Order No. 23-UI-235432, modifying decision # 101129 by concluding that claimant failed to provide information in accordance with the Department's rules and was therefore ineligible to receive unemployment insurance benefits for the weeks of July 30, 2023 through August 12, 2023 (weeks 31-23 through 32-23). On September 15, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On March 22, 2023, claimant filed an initial claim for unemployment insurance benefits. The Department determined the claim to be monetarily valid. Claimant claimed benefits for the weeks including July 30, 2023, through August 12, 2023 (weeks 31-23 through 32-23). These are the weeks at issue. The Department did not pay claimant benefits for these weeks.

(2) On August 8, 2023, the Department mailed a letter to claimant's address of record directing him to provide information about work hours and earnings within five days. Claimant did not immediately receive this letter.

(3) On August 17, 2023, claimant contacted the Department to inquire why he had been denied benefits. He provided the information requested in the August 8, 2023, letter at this time.

(4) On August 31, 2023, claimant received the August 8, 2023, letter in the mail.

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 weeks at issue, if otherwise eligible.

Under ORS 657.155(1)(b), in order to be eligible to receive benefits with respect to any week, an individual must make “a claim for benefits with respect to such week in accordance with ORS 657.260.” ORS 657.260(1) provides that claims for benefits shall be filed in accordance with such regulations as the 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 August 8, 2023, the Department mailed claimant a letter requesting that he provide information within five days. Claimant did not provide the information until August 17, 2023. The order under review concluded that since claimant “has a financial interest in the outcome of the proceeding,” his testimony that he did not timely receive the letter was insufficient to overcome the presumption that he had received it in the regular course of the mail. Order No. 23-UI-235432 at 2. The record does not support this conclusion.

It is correct that documents “sent through the U.S. Postal Service by regular mail are presumed to have been received by the addressee, subject to evidence to the contrary.” OAR 137-003-0520(10) (January 31, 2012). However, 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 he did not receive it until August 31, 2023. Audio Record at 12:44 to 13:30.

There is no first-hand evidence in the record to show that the letter was delivered to claimant prior to August 31, 2023, and claimant's testimony that it was delivered on that date is the only first-hand evidence that speaks to that point. In contrast to claimant's first-hand testimony, the fact that the letter was mailed to claimant's address of record and was not returned as undeliverable is circumstantial evidence. While this circumstantial evidence could support a finding that claimant received the letter in the regular course of the mail, it is outweighed by claimant's direct testimony that he did not receive it until August 31, 2023. Therefore, the record shows that claimant received the letter on August 31, 2023, 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 did not receive the letter within five days of its mailing, and the record does not show that he was aware of the Department's need for the requested information until he contacted the Department on August 17, 2023, and provided the information upon learning of the request. Equity therefore dictates that claimant should not be denied benefits for failing to timely respond to a letter that he did not receive and had no reason to know about prior to the deadline to respond.

For the above reasons, claimant provided the information the Department requested and is not ineligible for benefits for the weeks at issue on the basis of failure to provide information.

DECISION: Order No. 23-UI-235432 is set aside, as outlined above.

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

DATE of Service: October 27, 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 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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