

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1229

Reversed
Eligible Weeks 36-23 through 38-23

PROCEDURAL HISTORY: On September 22, 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 benefits for the weeks of September 3, 2023 through September 23, 2023 (weeks 36-23 through 38-23) (decision # 132238). Claimant filed a timely request for hearing. On October 20, 2023, ALJ Lewis conducted a hearing and issued Order No. 23-UI-239159, affirming decision # 132238. On November 2, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant's argument in reaching this decision.

FINDINGS OF FACT: (1) On April 30, 2023, claimant filed an initial claim for unemployment insurance benefits. The Department determined it to be a monetarily valid claim for regular unemployment insurance (regular UI) benefits. Wages from an educational institution were used to establish the claim. Claimant filed weekly claims for the weeks of September 3, 2023 through September 23, 2023 (weeks 36-23 through 38-23), but no benefits were paid.

(2) On June 27, 2023, the Department sent claimant a request for information regarding his employment status during the educational employer's customary summer break. Claimant responded to this questionnaire in narrative form and submitted his response to the Department, including that he "[did] not have reasonable assurance of returning to work after this recess period," with a detailed explanation of this assertion. Audio Record at 31:39. The Department allowed claimant benefits during the summer break on that basis, subject to all other eligibility requirements being met. The Department was aware that the employer's summer break ended September 23, 2023.

(3) On September 4, 2023, the Department mailed claimant another request for information regarding the final three weeks of summer break (weeks 36-23 through 38-23), consisting of the same questionnaire that was sent to claimant in June 2023. The request gave claimant until September 11, 2023 to submit a response, and advised that if claimant failed to respond, "a decision [would be] made with available information." Audio Record at 18:50

(4) Claimant received the September 4, 2023 request for information shortly after it was mailed. Claimant believed that since he had already provided the requested information in response to the previous request and that a decision would be made based on that response, there was no need for him to resubmit the information. He therefore took no immediate action. In previous instances where the Department needed additional clarification regarding his responses to educational employment status questionnaires, the Department contacted claimant by phone.

(5) On September 13, 2023, claimant realized that his most recent weekly claim had not been paid and suspected it was due to the September 4, 2023 request for information. That day, claimant faxed a copy of his June 2023 questionnaire response to the Department with an additional statement that his situation had not changed since he originally submitted that response. The Department did not attempt to contact claimant for clarification of the September 4, 2023 questionnaire response.

(6) On September 22, 2023, the Department concluded that claimant had not provided the information requested on September 4, 2023 in accordance with its rules and issued decision # 132238.

CONCLUSIONS AND REASONS: Claimant did not fail to provide information in accordance with the Department's rules and was not ineligible for benefits on that basis.

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) states:

- (1) With all claims, an individual shall furnish the Director with . . . information required for processing their claim. * * *
- (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.

* * *

The order under review concluded that claimant was ineligible for benefits from September 3, 2023 through September 23, 2023 (weeks 36-23 through 38-23) because he did not provide the information requested September 4, 2023 in accordance with the Department's rules. Order No. 23-UI-239159 at 3. The record does not support this conclusion.

On September 4, 2023, the Department mailed claimant a questionnaire regarding his eligibility for benefits for the weeks of September 3, 2023 through September 23, 2023 (weeks 36-23 through 38-23), asking about his status as an employee of an educational institution while that institution was on summer break. The deadline to respond to the questionnaire was September 11, 2023.¹ Claimant submitted a response on September 13, 2023, which the Department concluded was untimely and, apparently, insufficient. For the reasons explained herein, claimant's response provided the Department with sufficient information to adjudicate his claim for weeks 36-23 through 38-23 during the benefit week the information was due, and he therefore did not fail to provide information in accordance with the Department's rules.

Claimant testified that he received the September 4, 2023 questionnaire prior to September 11, 2023 but did not submit a response until September 13, 2023. Audio Record at 32:50. He explained that the Department had previously sent him the questionnaire regarding his eligibility during the summer break in June 2023 and he responded at that time. Audio Record at 34:20. Claimant believed he had already provided the information requested about educational institution employment and that he had been allowed benefits as to that issue through September 23, 2023 as a result. The September 4, 2023 questionnaire stated that if claimant failed to submit a response to it, a decision would be made with available information, and, as claimant's answers to the questionnaire had not changed since June, he was satisfied with an eligibility decision being made based on the information the Department already had from his previous response. Claimant therefore did not intend to submit a response to the September 4, 2023 request. On September 13, 2023, when his claim for week 36-23 was not promptly paid, claimant faxed his response from the June 27, 2023 questionnaire to the Department with a statement that the information in it had not changed.

Evidence offered by the Department generally corroborated claimant's testimony regarding these events. However, the record suggests that the Department did not believe claimant's response to the September 4, 2023 questionnaire complied with their rules because the response was two days late and did not respond directly to the questions posed by the questionnaire. The Department's representative testified he did not personally issue the September 4, 2023 request for information or decision # 132238. Audio Record at 19:10. However, he testified that according to notes from the claim adjudicator who made the September 4, 2023 request, the specific information needed to determine claimant's eligibility for benefits was whether a new offer of employment had been extended to claimant such that he would have reasonable assurance of returning to work after the summer break. Audio Record at 19:00. The representative corroborated claimant's testimony that on September 13, 2023, claimant faxed his response to the June 27, 2023 questionnaire as a response to the September 4, 2023 questionnaire. Audio Record at 29:56. The representative surmised that the adjudicator issued decision # 132238 on September 22, 2023, disqualifying claimant for failure to provide information even after receiving claimant's response, because the response "wasn't [on] the questionnaire that was sent and it wasn't by

¹ Five calendar days from September 4, 2023 was Saturday, September 9, 2023. However, ORS 174.120(2)(a) provides that if a legal deadline falls on a Saturday, the deadline is extended to the next business day: in this case, September 11, 2023.

the deadline in that questionnaire.” Audio Record at 32:00. This evidence did not show that claimant’s narrative response was inadequate to adjudicate the issue in question, nor that the Department’s rules were violated by claimant submitting his response later in the week than the September 11, 2023 deadline.

The record shows that in June 2023, the Department found claimant’s response to the June 27, 2023 questionnaire sufficient to allow benefits for the duration of summer break, which lasted until September 23, 2023. For unexplained reasons, on September 4, 2023, the Department requested the same information from claimant regarding the final three weeks of summer break that he had already provided in June. The request stated that the information was due on September 11, 2023. During the week of September 10, 2023 through September 16, 2023 (week 37-23) in which the information was due, claimant submitted the same questionnaire response that had been accepted in June 2023, along with a statement that the information in the response had not changed. The Department did not attempt to contact claimant to seek clarification of his response as it had done on previous occasions, suggesting that additional clarification was not needed. Neither the questionnaire nor claimant’s response was offered into evidence. Considering that the same response had been accepted in June 2023, the Department did not rebut claimant’s evidence that his response was sufficient to make the determination at issue on his claim by week 37-23. Therefore, more likely than not, claimant provided the Department with the information needed to adjudicate the educational employment issue as to claimant’s claims for the weeks of September 3, 2023 through September 23, 2023 (weeks 36-23 through 38-23). The record does not show that the two days that elapsed between the September 11, 2023 deadline and September 13, 2023 response, occurring during the same benefit week, impaired the Department’s ability to promptly adjudicate his weekly claims. Accordingly, claimant did not fail to provide information in accordance with the Department’s rules.

For these reasons, claimant is not ineligible to receive benefits for the weeks of September 3, 2023 through September 23, 2023 (weeks 36-23 through 38-23) based on a failure to provide information.

DECISION: Order No. 23-UI-239159 is set aside, as outlined above.

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

DATE of Service: December 20, 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.

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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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