Kelly Carlson

HARDY MYERS
ATTORNEY GENERAL

PETER D. SHEPHERD
DEPUTY ATTORNEY GENERAL



DEPARTMENT OF JUSTICE

1162 Court Street NE
Justice Building
Salem, Oregon 97301-4096
Telephone: (503) 378-4400
TTY: (503) 378-5938

November 4, 2005

George DuBois
10048 NE Campaign Street
Portland, OR 97220

Re: Petition for Public Records Disclosure Order:
Employment Department Records

Dear Mr. DuBois:

This letter is the Attorney General's order on your petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on October 31, 2005, asks the Attorney General to issue a decision regarding a request for records you made to the Employment Department (Department) in 2004. For the reasons that follow, we respectfully deny your petition.

The Public Records Law confers a right to inspect any public records of a public body in Oregon, subject to certain exemptions and limitations. *See* ORS 192.420. Any person who is denied the right to inspect or to receive a copy of a public record of a state agency may petition the Attorney General to review the record and determine if it may be withheld from disclosure. ORS 192.450(1).

Your petition states that your 2004 request to the Department was for "'[i]nformation secured from employing units, employees or other individuals when required for the proper presentation of a claim before a hearings officer,' as delineated in ORS 657.665(1)." We spoke with Sallie Hogan, Manager of the Department's Unemployment Insurance Benefits Section, about your petition.

Ms. Hogan told us that you filed a claim with the Department in 2003 for unemployment insurance with regard to your employment by WaferTech, LLC. Subsequently, in late 2003, you received a copy of the Department's administrative decision granting benefits, but did not receive records regarding information the Department had received from WaferTech because the decision granting you benefits was not challenged. In 2004, you requested records related to your Oregon claim for unemployment insurance in connection with a claim filed in Washington State. According to Ms. Hogan, in denying your request, the Department did not disclose

records provided to the Department by WaferTech or documentation of conversations between the Department and WaferTech. Ms. Hogan told us that she denied your request because ORS 657.665(1) prohibits disclosure of these records except under specified circumstances which were not applicable to your request. Specifically, ORS 657.665(1) and (2) provide:

> (1) Information secured from employing units, employees or other individuals pursuant to this chapter:
>
> (a) Shall be confidential and for the exclusive use and information of the Director of the Employment Department in the discharge of duties and shall not be open to the public * * * except to the extent necessary for the presentation of a claim and except as required by the regulations of the United States Secretary of Health and Human Services pursuant to section 3304(a) of the Federal Unemployment Tax Act, as amended, and except as required by section 303 of the Social Security Act, as amended.
>
> * * *
>
> (2) However, any claimant or legal representative, at a hearing before an administrative law judge, shall be supplied with information from such records to the extent necessary for the proper presentation of a claim.

Your petition quotes from sections (1) and (2) of this statute to describe the records you are seeking and asserts that the language of section (2) requires the Department to disclose the records because you requested them for purposes of presenting a claim to receive unemployment benefits from the State of Washington. Whether your assertion is correct most immediately depends on the scope of the term "claim" in ORS 657.665(1) and (2).

Our goal in interpreting ORS 657.665 is to discern the intent of the legislature. *PGE v. Bureau of Labor and Industries (PGE)*, 317 Or 606, 610, 859 P2d 1143 (1993). The framework for statutory analysis set forth by the Oregon Supreme Court in *PGE* requires an examination of the text and context of the statute. *Id.* Consideration of the context of the statute includes an examination of other provisions of the same statute and other related statutes. If the legislature's intent is clear from the inquiry into text and context, further inquiry is unnecessary. *Id.*

As used in ORS 657.665(1) and (2), "claim" is not statutorily defined. Its plain, natural and ordinary meaning is "a demand for compensation, benefits, or payment." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (unabridged) (1993) at 414. While that definition is certainly without geographic or political limitation, ORS chapter 657 governs *Oregon's* system of unemployment insurance. *See, e.g.*, ORS 657.601(1) ("[The Employment Department shall] [a]dminister the unemployment insurance laws of this state to support Oregonians during periods of unemployment* * * *"). Based on the context provided by the remaining provisions of ORS 657.665, and chapter 657 as a whole, it appears that the exception to confidentiality at issue was intended to allow an individual who has filed an *Oregon* unemployment insurance claim to

receive records for the purpose of presenting that claim at hearings in an effort to receive benefits payable under Oregon law.[1]

Moreover, with regard to your request for records to assist in your claim for benefits in the State of Washington, your petition states:

> Petitioner's particular proceeding has been settled, but he requests a Decision in this matter, since whether the Department's interpretation of this statute is unlawful essentially remains unresolved.

Because you have no claim for unemployment insurance presently pending in Washington, regardless of whether or not ORS 657.665(2) provides for disclosure of records to the extent required by an individual to present a claim for unemployment insurance in *any* jurisdiction, you are not entitled to the records because you have not shown that they are "necessary for the proper presentation of a claim."

ORS 192.502(9) exempts records from disclosure if "disclosure is prohibited or restricted or otherwise made confidential under Oregon law." Because ORS 657.665(1) makes the records you seek confidential and the exceptions provided in the remainder of the statute, including section (2), are inapplicable, we deny your petition under ORS 192.502(9).

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

PDS:gvk/AGS16420
c: Sallie Hogan, Manager, Unemployment Insurance Benefits Section, Oregon Employment Department

[1] For example, a "valid claim" is defined to mean "any claim for benefits made in accordance with ORS 657.260 if the individual meets the wages-paid-for-employment requirements of ORS 657.150." ORS 657.010(12). ORS 657.260(1) requires that claims for benefits be filed pursuant to regulations prescribed by the Department Director. The Director clearly has jurisdiction over only claims for Oregon unemployment insurance benefits. Also, "benefits" are defined to mean "the money allowances payable to unemployed persons under this chapter." ORS 657.010(2). The only money allowances payable under ORS chapter 657 are those paid by the State of Oregon. In addition, the term "claimant" is used throughout ORS chapter 657 to refer to individuals that have requested benefits under Oregon law. *See, e.g.,* ORS 657.265 (requiring Department to give notice to most recent employer when a "claimant" files a claim), ORS 657.266(2) (requiring Department to give notice of determination of eligibility to the "claimant"), ORS 657.269 (making Department decision final unless "claimant" or employer files a request for a hearing).