

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-1112

Affirmed
Ineligible Weeks 35-18 through 40-18

PROCEDURAL HISTORY: On October 16, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work during the weeks including August 26, 2018 through October 6, 2018 (decision # 90809). Claimant filed a timely request for hearing. On November 8, 2018, ALJ S. Lee conducted an interpreted hearing, and on November 16, 2018, issued Order No. 18-UI-119912, affirming the Department's decision. On December 4, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Claimant filed an initial claim for benefits on June 18, 2018. Claimant claimed and was paid benefits for the weeks including August 26, 2018 through October 6, 2018 (weeks 35-18 through 40-18), the weeks at issue.

(2) During the weeks claimed, claimant sought work as a childcare provider or teacher's assistant. Claimant's labor market area was the Portland, Beaverton, Tigard, Tualatin and Milwaukie areas in Oregon. In claimant's labor market, the customary days and hours for work as a childcare provider were Monday through Friday, 6:00 a.m. to 6:00 p.m. and for work as a teacher's assistant, Monday through Friday, 8:00 a.m. to 5:00 p.m.

(3) Claimant and her husband had two minor children, ages seven and ten, who shared their residence. During the weeks at issue, claimant was willing to work and capable of reporting for the work she sought only between the hours of 8:00 a.m. and 3:00 p.m. while her children were in school. Her husband was not capable of performing any child care for their children on weekdays between the hours of 6:00 a.m. and 5:00 p.m. because of his own work during those hours. Claimant's mother provided child care for claimant's minor children prior to the weeks at issue, but during those weeks had to provide care for her own mother who was seriously ill. Her care for her own mother left her incapable of also providing child care for claimant's children on weekdays between the hours of 6:00 a.m. and 5:00 p.m.

(4) During the weeks at issue, claimant had no other child care options prior to 8:00 a.m. and after 3:00 p.m. and she was unwilling to leave her children at home alone prior to 8:00 a.m. and between the hours of 3:00 p.m. and 6:00 p.m. because she considered it unsafe, particularly in her neighborhood.

(5) On August 27, 2018, claimant missed a work opportunity with her former employer, Neighborhood House Incorporated, due to a lack of child care. Claimant had been working as a teacher's aide and assistant for that employer between the hours of 12:00 p.m. and 3:00 p.m. but refused an opportunity to work until 4:00 p.m. that day due to her lack of available child care between 3:00 p.m. and 4:00 p.m.

CONCLUSIONS AND REASONS: We agree with the ALJ. Claimant was not available for work during the weeks at issue and is ineligible for benefits for those weeks.

To be eligible to receive benefits, unemployed individuals must be able to work, available for work, and actively seek work during each week claimed. ORS 657.155(1)(c). An individual must meet certain minimum requirements to be considered "available for work" for purposes of ORS 657.155(1)(c). OAR 471-030-0036(3)(April 1, 2018). Among those requirements are that the individual be willing to work and capable of reporting to full time, part time and temporary work opportunities throughout the labor market, and refrain from imposing conditions that limit the individual's opportunities to return to work at the earliest possible time. *Id.*

The Department denied benefits to claimant in this case after having initially allowed benefits. Where the Department seeks to deny benefits it has already paid, the Department bears the burden to establish that the claimant was ineligible to receive them. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976). The Department met its burden.

The Department established that during the weeks at issue claimant was incapable of accepting and reporting for suitable work opportunities within her labor market because of a lack of reliable child care for her two minor children prior to 8:00 a.m. and after 3:00 p.m. At hearing, claimant admitted that on August 27, 2018 as well as during the weeks at issue, she did not have any available child care that would have enabled her to work after 3:00 p.m. for her former employer. Transcript at 9-10. She explained that her husband was unavailable due to his own work hours and that her mother was unavailable because she was caring for her own seriously ill mother. *Id.* Viewing the record as a whole, claimant's lack of available childcare during the weeks at issue imposed a condition that limited her opportunities to return to work at the earliest possible time.

Nor was claimant "available for work" under OAR 471-030-0036(4), which provides:

Notwithstanding the provisions of OAR 471-030-0036(3), an individual who is the parent, step-parent, guardian or other court/legally-appointed caretaker of a child under 13 years of age or of a child with special needs under the age of 18 who requires a level of care over and above the norm for his or her age, who is not willing to or capable of working a particular shift because of a lack of care for that child acceptable to the individual shall be considered available for work if:

(a) The work the individual is seeking is customarily performed during other shifts in the individual's normal labor market area as defined by OAR 471-030-0036(6); and

(b) The individual is willing to and capable of working during such shift(s).

The referenced provision provides an exception for individuals who restrict their availability to work to “a particular shift” because of child care issues if the work the individual is seeking is customarily performed during other shifts in that individual's normal labor market area. Here, the work claimant sought during the weeks at issue was not customarily performed during other shifts in her labor market area. Accordingly, due to claimant’s lack of available child care prior to 8:00 a.m. and after 3:00 p.m. during the weeks at issue, she was not “available for work” under OAR 471-030-0036(4).

Claimant was not available for work during each of the weeks including August 26, 2018 through October 6, 2018 (weeks 35-18 through 40-18) and is not eligible for benefits for those weeks for that reason.

DECISION: Order No. 18-UI-119912 is affirmed.

J. S. Cromwell and D. P. Hettle;
S. Alba, not participating.

DATE of Service: December 31, 2018

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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have 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 desisyong ito.

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 Asuntos Laborales. Si no está de acuerdo con esta decisión, puede presentar una Petición 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.

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

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.