

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0071

Affirmed
Ineligible

PROCEDURAL HISTORY: On November 2, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from October 21, 2018 through October 27, 2018 (decision # 135005). Claimant filed a timely request for hearing. On January 3, 2019, ALJ Frank conducted a hearing, and on January 11, 2019 issued Order No. 19-UI-122602, concluding claimant was not available for work from October 21, 2018 through November 10, 2018. On January 17, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Before early September 2018, Coca Cola Bottling Co. employed claimant full-time as a technician. On September 5, 2018, claimant began working full-time as an apprentice plumber with Lee Ramsey Plumbing. Claimant worked for Lee Ramsey Plumbing on weekdays. On September 8, 2018, Coca Cola agreed to allow claimant to work part-time, only on weekends, as a merchandiser. Claimant wanted to continue working for Coca Cola until his hourly wage with Lee Ramsey Plumbing approximated what his hourly wage had been as a full-time technician.

(2) Sometime before October 5, 2018, Lee Ramsey Plumbing told claimant that he was laid off until it secured permits from the City of Bend that allowed it to work on certain projects. Lee Ramsey Plumbing did not give claimant an expected return to work date. Claimant was expected to call Lee Ramsey Plumbing every day to learn if he would be called back to work that day. On October 5, 2018, claimant filed a claim for unemployment benefits. Claimant's claim was determined valid. Claimant claimed benefits for the weeks of October 21, 2018 through November 10, 2018 (weeks 43-18 through 45-18), the weeks at issue.

(3) During the weeks at issue, the days and hours customary for an apprentice plumber in claimant's labor market were Mondays through Fridays, from 7:00 a.m. until 5:00 p.m. The days and hours customary for a merchandiser were all days and all hours.

(4) During the weeks at issue, claimant continued working weekends for Coca Cola. Claimant did not request and did not seek additional work from Coca Cola during those weeks because he needed to be able to return to work for Lee Ramsey Plumbing whenever it secured the plumbing permits. Because Lee Ramsey Plumbing would not notify claimant if he was or was not going to return to work on a particular day until after the time work shifts started at Coca Cola, claimant did not think he was able to accept additional work at Coca Cola.

CONCLUSIONS AND REASONS: Claimant was not available for work during weeks 43-18 through 45-18. Claimant is not eligible to receive 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 during all of the usual hours and days customary for the work being sought, and refrain from imposing conditions that limit the individual’s opportunities to return to work at the earliest possible time. *Id.*

Claimant did not request reinstatement of his full-time hours, or seek additional hours from Coca Cola during the weeks at issue because he needed to be available on weekdays in the event that he received notification that Lee Ramsey Plumbing wanted him to return to work. Claimant seemed sincere in this explanation and, given that his career objectives had changed to the field of plumbing, he likely felt genuinely constrained to pass up additional work with Coca Cola. However, by not seeking that work in favor of remaining available to Lee Ramsey Plumbing, if and when he was called back to work for it, claimant imposed a condition that, within the meaning of OAR 471-030-0036(3)(c), substantially reduced his opportunities to return to full-time work at the earliest possible time. There is no provision in OAR 471-030-0038(3) that exempts claimant from its operation in this case, or otherwise authorizes EAB to create such an exemption. Applying the terms of OAR 471-030-0036(3)(c), claimant was not available for work during the weeks at issue. Claimant is not eligible to receive benefits for those weeks.

DECISION: Order No. 19-UI-122602 is affirmed.

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

DATE of Service: February 13, 2019

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 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.

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