

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0082

Reversed
Eligible Weeks 46-18 through 52-18

PROCEDURAL HISTORY: On November 29, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from November 11, 2018 until the reason for the denial ended (decision # 131412). Claimant filed a timely request for hearing. On January 8, 2019, ALJ Frank conducted a hearing, and on January 10, 2019, issued Order No. 19-UI-122483, concluding claimant was not available for work for the period from November 11 through December 29, 2018. On January 22, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Claimant filed an initial claim for benefits on February 26, 2018. Claimant was a member of a closed union. Claimant's normal labor market area was Hillsboro, Aloha, Banks, Beaverton, Forest Grove, McMinnville and the southwest area of Portland, Oregon. Claimant traveled for work from his union hall. Claimant had been working a union job in Richmond, California until that job ended on October 22, 2018.

(2) Claimant claimed unemployment insurance benefits for the period from November 11 through December 29, 2018 (weeks 46-18 through 52-18), which are the weeks at issue. Due to an internet security application claimant had on his computer, it appeared to the Department as though claimant had filed the weekly claims from computers located outside the United States. However, claimant went to Los Angeles, California on November 9, 2018 and remained in Los Angeles and San Diego during the weeks at issue. The Department denied claimant benefits for the weeks at issue.

(3) Claimant stayed in contact with his union and was on his union's "out of work" list during all of the weeks at issue. Claimant did not report other work search activities to the Department during the weeks at issue. Audio Record at 22:57 to 23:01. Claimant was capable of accepting and reporting for full time and part time work from his union in the areas where he spent the weeks at issue.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude that claimant was available for work.

To be eligible to receive benefits, unemployed individuals must be available for work during each week claimed. ORS 657.155(1)(c). An individual who leaves the individual's normal labor market area for the major portion of any week is presumed to be unavailable for work. ORS 657.155(2)(a). The presumption may be overcome if the individual establishes that the individual has conducted a bona fide¹ search for work and has been reasonably accessible to suitable work in the labor market area in which the individual spent the major portion of the week to which the presumption applies. ORS 657.155(2)(b). When an individual seeks work through a union hiring hall, the individual's normal labor market area is defined as the normal referral jurisdiction of the union, as indicated by the applicable contract. OAR 471-030-0036(6)(b) (April 1, 2018). If an individual is a member in good standing union that does not allow members to seek non-union work, an individual is actively seeking work by remaining in contact with that union and being capable of accepting and reporting for work when dispatched by that union. OAR 471-0300036(5)(d).

In Order No. 19-UI-122483, the ALJ determined that claimant was not available for work during the period from November 11 through December 29, 2018 (weeks 46-18 through 52-18) because he was away from his normal labor market in Oregon and did not overcome the presumption that he was unavailable for work because he awaited work opportunities from his closed union and did not otherwise search for work in California.² We disagree.

Here, the Department witness testified that claimant's normal labor market was Hillsboro, Oregon and the surrounding areas. Audio Record at 12:03 to 12:29. The record shows that claimant traveled for work with his union, had been working through the union in California, and sought work through his union hiring hall in California, raising the issue of whether claimant's normal labor market was not where he resided. However, because the record does not show the normal referral jurisdiction of claimant's union, as indicated by the applicable contract, we are unable to determine if claimant's normal labor market was anywhere other than the Hillsboro area. *See* OAR 471-030-0036(6)(b). Therefore, because claimant was outside of the Hillsboro area during all of the weeks at issue, claimant is presumed to have been unavailable for work unless he overcomes the presumption. *See* ORS 657.155(2)(b).

Claimant was actively seeking work during the weeks at issue because he is a member of a closed union, remained on his union's "out of work list" during all the weeks at issue, and was capable of accepting and reporting for work when dispatched by that union. Claimant's last job before the weeks at issue was in California and through his union hall. We presume that claimant was reasonably accessible to new referrals from his union when he was in Los Angeles and San Diego. Claimant has therefore overcome the presumption that he was unavailable for work by being outside of the Hillsboro area.

Claimant's active work search during the weeks at issue demonstrates that he was available for work despite being outside of his normal labor market during weeks 46-18 through 52-18.

¹ "Bona fide" is defined as, "made in good faith without fraud or deceit." <https://www.merriam-webster.com/dictionary/bona%20fide>.

² Order No. 19-UI-122483 at 3.

DECISION: Order No. 19-UI-122483 is set aside, as outlined above.

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

DATE of Service: February 21, 2019

NOTE: This decision reverses an order that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks 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 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 ໄດ້ ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

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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