

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0126

Reversed
Benefits Allowed Weeks 42-18 to 52-18

PROCEDURAL HISTORY: On November 14, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from October 14, 2018 to November 3, 2018 (decision # 111719). Claimant filed a timely request for hearing. On January 8, 2019, ALJ Seideman conducted a hearing, and on January 16, 2019 issued Order No. 19-UI-122798, concluding claimant was not available for work from October 14, 2018 to December 29, 2018. On February 4, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument, but only to the extent it was relevant and based upon the hearing record.

FINDINGS OF FACT: (1) On September 11, 2018, claimant filed an initial claim for unemployment insurance benefits. She filed weekly claims for benefits from October 14, 2018 through December 29, 2018 (weeks 42-18 through 52-18), the weeks at issue.

(2) At all relevant times during the weeks at issue claimant had experience working in compliance, medical records, health information, and as a supervisor or medical and health manager. Claimant's labor market was Eagle Point, White City, Jacksonville, and Medford, Oregon. The customary days and hours for the types of work in claimant's employment history included Mondays through Fridays from 8:00 a.m. to 5:00 p.m.

(3) At all relevant times claimant's driver's license was suspended and she lacked the legal authority to operate a vehicle. The distance between Eagle Point, Oregon and Jacksonville, Oregon, the two most distant areas in claimant's labor market, was 15.7 miles.¹

¹ The distance between two points on a map is a generally cognizable fact, and we take notice of it for purposes of reaching this decision. *See e.g.* <https://www.mapquest.com/directions/from/us/or/eagle-point/to/us/or/jacksonville-282029833>. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.

(4) In September and early October 2018, claimant felt depressed and had anxiety due to the loss of her job. She also had PTSD. She had never been unemployed before and felt despair that anyone would hire her. She had several contacts with Department employees during that period of time, during which she notified the Department that she lacked the ability to drive and did not have a computer, and expressed doubt that she could actively seek work or that anyone would hire her if she did so.

(5) On October 15, 2018, claimant went to a WorkSource Oregon office and met with Department employees that helped her understand what to do. She “saw the light” during that visit and understood that she could not limit her work search. Transcript at 19.

(6) After the October 15, 2018 WorkSource Oregon visit claimant began to aggressively seek work. She did not have voicemail and did not answer her phone for unidentified calls from outside her area, but did answer calls from within her labor market area and areas from which she might expect to receive calls.

(7) To transport herself throughout her labor market claimant relied upon two friends to give her rides. Claimant’s friends were available to help her on Mondays, Thursdays, and after 3:00 p.m.

(8) Claimant also used public transportation. The Rogue Valley Transportation District (RVTD) operated transit connecting White City and Jacksonville during the customary days and hours for claimant’s types of work.² She used her bicycle to transport herself around Eagle Point and White City, a distance of 4.9 miles.³

(9) Claimant has sought transportation vouchers through a charitable organization. She has reliably transported herself around her labor market to attend appointments with social security, other services, and mental health. Her friends have provided her rides to pick up or drop off job applications.

(10) From October 15, 2018 until the beginning of December 2018, claimant used a transportation network company (Uber) to obtain rides when she was unable to obtain transportation through those other methods. In December 2018, she ran out of money to fund paid rides through Uber and could no longer use that service to transport herself throughout her labor market.

CONCLUSIONS AND REASONS: We disagree with the ALJ, and conclude that claimant was available to work from October 14, 2018 to December 29, 2018 (weeks 42-18 to 52-18).

² The existence and schedule of a government transportation system is a generally cognizable fact, and we take notice of it to reach this decision. *See e.g.* https://www.rvtd.org/Files/RVT1638_Ride_Guide_WEB_102218%20%281%29.pdf. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.

³ The distance between two points on a map is a generally cognizable fact, and we take notice of it for purposes of reaching this decision. *See e.g.* <https://www.mapquest.com/directions/from/us/or/white-city-282030419/to/us/or/eagle-point-282041578>. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.

To be eligible to receive benefits, unemployed individuals must be available for and actively seek work during each week claimed. ORS 657.155(1)(c). To be considered “available for work” for purposes of ORS 657.155(1)(c) the individual must 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 substantially reduce the individual’s opportunities to return to work at the earliest possible time. OAR 471-030-0036(3) (April 1, 2018). For purposes of ORS 657.155(1)(c), an individual is actively seeking work when doing what an ordinary and reasonable person would do to return to work at the earliest opportunity. OAR 471-030-0036(5)(a) (April 1, 2018).⁴

The ALJ concluded that claimant was not available to work or actively seeking work during the weeks at issue because she “had many personal problems” and “did not answer her phone or have her voice mail [*sic*] set up,” and “was not in a position to actively seek work.” Order No. 19-UI-122798 at 3. We disagree.

The ALJ erred in concluding that claimant’s mental health prevented her from seeking work or being available for work during the weeks at issue. The preponderance of the evidence in this record is that claimant’s “many personal problems” affected her ability to seek work and be available for work between her September 11, 2018 initial claim filing date and October 15, 2018 when she spoke with WorkSource Oregon employees and “saw the light.” The record lacks evidence suggesting that claimant’s mental health or personal problems prevented her from seeking work or being available for work in a legally significant way during the weeks at issue, which began October 14, 2018.

Likewise, the ALJ erred in concluding that claimant’s failure to answer the phone or lack of voicemail was legally significant. Although claimant testified she did not answer her phone to calls she received outside her labor market from numbers she did not recognize, she also testified that she did answer her phone when she received calls in her labor market or from areas she recognized and expected calls. Additionally, there is nothing in the applicable laws or rules, or in the instructions typically given by the Department to claimants that requires claimants to have or use voicemail as a condition of maintaining eligibility to receive benefits. It is more likely than not that during the weeks at issue, which began October 14, 2018 and ended December 29, 2018, claimant was not prevented in a legally significant way from seeking work or being available for work by reason of her phone usage, or her lack of voicemail.

Although the ALJ did not address it, the Department initially denied claimant benefits in this case because she lacked transportation due to her suspended license and continued to maintain at the hearing that a lack of transportation had a legally significant impact on claimant’s availability for work. However, the record fails to show that is the case. The record shows that at all relevant times claimant rode her bicycle between Eagle Point and White City, a distance of less than five miles. It is not unreasonable or implausible that an individual would regularly bicycle a distance of less than five miles when necessary to seek, obtain, maintain, or commute to and from work. Had she obtained a job anywhere else in her labor market, bicycling from her residence in Eagle Point to White City, and taking public transportation between White City and Jacksonville, would have been an option available to

⁴ There are additional, specific requirements for an individual to be considered actively seeking work, including conducting five work seeking activities each week that include two direct contacts with an employer that might hire the individual. *See* OAR 471-041-0036(5)(a). There is nothing in this record suggesting that claimant did not do the requisite number of work seeking activities, or make the requisite number of direct contacts in any given week; we therefore do not further discuss claimant’s specific work-seeking activities during the weeks at issue.

claimant during the customary days and hours for the types of work she likely sought, and it appears she was willing to do that. Claimant would have been able to supplement her bicycling and public transportation by obtaining rides from friends to and from work two days a week, and home from work five days per week. Finally, until December 2018, claimant was able to supplement the other modes of transportation by using Uber to obtain rides. She stopped using Uber in December 2018 because she ran out of money; presumably, if claimant was working and drawing an income, she would once again be able to supplement the other modes of transportation by using Uber to obtain rides.

In this case, claimant was required to be available for and actively seeking work that would be conducted Mondays through Fridays between the hours of 8:00 a.m. and 5:00 p.m. and performed in the geographic area spanning White City and Jacksonville, Oregon as a condition of maintaining eligibility for benefits. It appears on this record that claimant was willing to work, capable of reporting to work, and actively sought work as required, and that her circumstances did not constitute legally significant restrictions on her availability for work or her active work search. Claimant therefore is not ineligible for benefits for those reasons from October 14, 2018 to December 28, 2018 (weeks 42-18 to 52-18).

DECISION: Order No. 19-UI-122798 is set aside, as outlined above.

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

DATE of Service: March 6, 2019

NOTE: This decision reverses an order that denied benefits. Please note that payment of any benefits owed, if any, 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 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 الإستئناف 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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