

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0371

Affirmed
Ineligible

PROCEDURAL HISTORY: On February 22, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work during the week of January 20, 2019 through January 26, 2019 (decision # 111127). Claimant filed a timely request for hearing. On March 21, 2019, ALJ Monroe conducted a hearing, and on March 29, 2019 issued Order No. 19-UI-127347, concluding that claimant was not available for work during the weeks of January 20, 2019 through February 16, 2019. On April 11, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On December 22, 2018, claimant registered for the winter term at Portland Community College (PCC). Winter term ran from January 9, 2019 until March 24, 2019. Claimant enrolled in Spanish language classes and a photography class. Claimant was scheduled to attend those classes in person from 6:00 p.m. until 8:20 p.m. on Tuesdays and Thursdays, and from 9:00 a.m. until 3:00 p.m. on Fridays. Claimant was not able to take these classes online or at other times.

(2) On January 24, 2019, claimant filed a claim for unemployment insurance benefits. The claim was determined to be valid. Claimant claimed but was not paid benefits for the weeks of January 20, 2019 through February 16, 2019 (weeks 04-19 through 07-19), the weeks at issue.

(3) During the benefit application process on January 24, 2019, claimant was asked to complete a student eligibility questionnaire after he indicated that he was attending school. In response to the questionnaire, claimant stated he was not willing to change his class hours in order to accept work and that his classes were not available during any other hours or on any other days. In further response to the questionnaire, claimant stated that he was willing to work 30 hours per week, and that he was not willing to work on Fridays.

(4) During the weeks at issue, claimant sought production, clerical and laborer work. In claimant's labor market, the usual days and hours customary for production work were Sunday through Saturday, day and evening shifts; for clerical work were Mondays through Fridays, from 8:00 a.m. until 5:00 p.m.; and for laborer work were Sunday through Saturday, day shifts.

(5) During the weeks at issue, when claimant applied for work, he informed the potential employers on application forms or in cover letters that he was in school until March 24, 2019 and provided his class schedule. Claimant would note in the applications and cover letters that he would like the employer to give him a work schedule that did not conflict with his class schedule at least until the end of the school term. Transcript at 13-14. However, if specifically asked, claimant would indicate that his availability “was open in all hours.” Transcript at 14.

(6) On February 11, 2019, claimant visited a WorkSource Oregon office to complete the benefit registration process. During that visit, a representative informed claimant that the responses he had provided to the student eligibility questionnaire jeopardized his eligibility for benefits, particularly his statements that he would not drop classes for work, that he was willing to work only 30 hours per week, and that he would not work on Fridays.

CONCLUSIONS AND REASONS: Claimant was not available for work during the weeks of January 20, 2019 through February 16, 2019 and 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 days and hours 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.*

By logical extension of the holding in *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976), claimant had the burden to show that he was eligible to receive benefits where, as here, he was not paid benefits for the weeks at issue. Accordingly, claimant must show by a preponderance of the evidence that he was available for work during the weeks at issue.

Although claimant contended that he was not aware of the full scope of the availability requirement until he received that information at a WorkSource office on February 11, 2019, he did not suggest that his approach to potential employers changed after he acquired this knowledge. During the weeks at issue, claimant testified that he indicated to potential employers that he was a student, that he wanted a work schedule that accommodated his class schedule, and that he provided information about the requirements of his class schedule. That claimant provided specific information to potential employers about the hours and days of his class schedule likely reinforced the strength of claimant’s desire to avoid work that conflicted with his classes. While claimant may have responded generally to employers if they asked that he was available “all hours,” the more specific, detailed information that he supplied in the applications and cover letters about his school schedule significantly undercuts his more generalized assertion of availability. Claimant’s stated preference and desire that potential employers accommodate his school schedule likely was construed by those employers as a condition to claimant’s willingness to accept work offered by them, and likely would have deterred them from offering work to claimant if its schedule conflicted with his class schedule. Because the hours and days claimant was in class conflicted with the usual days and hours customary for the work claimant was seeking, claimant’s preference to

avoid a work schedule that conflicted with his class schedule likely imposed a condition that limited his opportunity to return to work at the earliest possible time.

Claimant did not meet his burden to show that he was available for work during the weeks at issue, week 04-19 through 07-19. Claimant is not eligible to receive benefits during those weeks.

DECISION: Order No. 19-UI-127347 is affirmed.

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

DATE of Service: May 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

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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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