

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0383

Affirmed
Ineligible Week 09-19

PROCEDURAL HISTORY: On March 7, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work during the week of February 24, 2019 through March 2, 2019 (decision # 81428). Claimant filed a timely request for hearing. On April 9, 2019, ALJ Lewis conducted a hearing, and on April 10, 2019, issued Order No. 19-UI-127913, affirming the Department's decision. On April 15, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Prior to January 1, 2019, claimant was employed as a research scientist in the field of biomedical engineering in Eugene, Oregon, where he resided. Claimant's employment with that employer ended on December 31, 2018, when he was laid off.

(2) Claimant filed an initial claim for unemployment insurance benefits effective the week ending January 5, 2019. The Department determined that claimant had a valid claim and that his labor market area was the state of Oregon.¹

(3) On Saturday, February 23, 2019, claimant traveled from Eugene, Oregon to Vancouver, Canada to attend an international trade show concerning biomedical devices. Claimant sought employment with one of 50 companies in attendance at the trade show within his field of expertise. While there, claimant made contact with several potential employers and applied for work as a distributor or sales representative of biomedical devices working from Eugene, Oregon. Claimant did not seek work within the geographic area of Canada and was not authorized to work in Canada. Claimant left the conference on Thursday, February 28, 2019 and returned to Oregon that evening.

¹ We take notice of this fact, which is contained in Employment Department records. 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(1)(c) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.

(4) On or about March 5, 2019, claimant claimed, but was not paid benefits for the week including February 24, 2019 through March 2, 2019 (week 09-19), the week at issue.

CONCLUSIONS AND REASONS: Claimant was not available for work from February 24, 2019 through March 2, 2019.

To be eligible to receive benefits, unemployed individuals must be available for work during each week claimed. ORS 657.155(1)(c). ORS 657.155(2) provides:

(a) 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 within the meaning of this section.

(b) The presumption described in paragraph (a) of this subsection may be overcome if the individual establishes to the satisfaction of the director that the individual:

(A) Has conducted a bona fide 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; or

(B) Was required to be outside the individual's normal labor market area to apply for suitable employment within the individual's normal labor market.

Among other requirements, an individual is considered available for work if the individual is physically present in the labor market every day of the week unless the individual is, in pertinent part, either actively seeking work outside his or her normal labor market area or infrequently absent from the normal labor market for less than half the week. OAR 471-030-0036(3)(d) (April 1, 2018). The labor market is established by the Department's adjudicators and defined, in pertinent part, as the geographic area surrounding claimant's permanent residence within which employees in similar circumstances are generally willing to commute to seek and accept the same type of work at a comparable wage. OAR 471-030-0036(6).

Claimant's permanent residence was located in Eugene, Oregon during the week at issue. His labor market, as established by the Department, included the geographic area of the state of Oregon. Claimant was not physically present in his normal labor market area during five days of the week at issue. He is therefore presumed under ORS 657.155(2) to be unavailable for work.

Claimant may overcome that presumption if he was required to be outside of his labor market area to apply for suitable employment within his labor market. Although the record shows that claimant applied for suitable employment within Oregon while in Canada, because claimant failed to show that he was *required* to be outside his labor market for that purpose, he has not overcome the presumption for that reason.

Claimant may also overcome the presumption if he conducted a bona fide search for work and was reasonably accessible to suitable work in the labor market area in which he spent the major portion of the week to which the presumption applies. During the week at issue, claimant spent the major portion

of the week at a trade show in Vancouver, Canada. Claimant was not reasonably accessible to work in the labor market of Vancouver, Canada given that during that week, claimant was not authorized to work in Canada. Audio Record ~ 17:45 to 18:15. For the reasons stated, claimant has not overcome the legal presumption set forth in ORS 657.155(2) that he was not available for work when he was away from his normal labor market during week 09-19.

In written argument to EAB, claimant asserted that he disagreed with the ALJ's order, which denied him benefits because he was not authorized to work in Canada, because although he was not authorized to work in Canada, he was seeking work in Oregon, and not in Canada, while at the trade show. Written Argument at 1. While claimant's argument is understandable, the Department, the ALJ and EAB are all required to follow the statutes established by the legislature and rules set by the Department. One of those rules, OAR 471-030-0036(3)(i), cited by the ALJ as the basis for her decision, and which also applies here, states, in relevant part:

(i) An individual is not available for work in any week claimed under ORS 657.155 if the individual resides or spends the major portion of the week:

(A) In Canada unless the individual is authorized to work in both the United States and Canada;

Because claimant spent the major portion of the week at issue in Canada and was not authorized to work in Canada, under OAR 471-030-0036(3)(i), he was not available for work during that week.

Claimant was not available for work during the week at issue (week 09-19) and for that reason is not eligible for unemployment insurance benefits.

DECISION: Order No. 19-UI-127913 is affirmed.

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

DATE of Service: May 22, 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 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.

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