

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0539

Reversed
Eligible

PROCEDURAL HISTORY: On April 12, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work during the weeks of February 3, 2019 through March 9, 2019 (decision # 93438). Claimant filed a timely request for hearing. On May 17, 2019, ALJ Snyder conducted a hearing, and on May 24, 2019 issued Order No 19-UI-130550, affirming the Department's decision. On June 10, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) On December 5, 2018, claimant filed a claim for unemployment insurance benefits. Claimant's claim was determined valid.

(2) Sometime before February 3, 2019, claimant's regular employer laid him off. At the time of the layoff and after, claimant was a member in good standing of a closed union. Around the time of the layoff, claimant's employer contacted the union and requested that claimant be placed "on hold" so that claimant would be available when the employer recalled him to work. Audio at ~15:57. As a result, claimant's name was not placed on the union's "out-of-work list." Audio at ~9:40, ~14:28.

(3) Claimant claimed and was paid benefits for the weeks of February 3, 2019 through March 9, 2019 (weeks 06-19 through 10-19), the weeks at issue. During the weeks at issue, claimant's name did not appear on the union's out-of-work list. During the weeks at issue, claimant did not perform any work seeking activities other than remaining in contact with the union.

CONCLUSIONS AND REASONS: Claimant actively sought work during the weeks at issue. Claimant is 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). 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). With limited exceptions, individuals are "required to conduct at least five work seeking activities per week, with at least two of those being direct contact with an employer who might hire the individual." *Id.* For an individual who is a member in good standing of a union that does not allow members to seek non-union work, such 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 471-030-0036(5)(c).

Where, as here, the Department has paid benefits to claimant for the period in which his eligibility to receive those benefits is at issue, the Department has the burden to show that claimant was not eligible to receive those benefits. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976) (where the Department has paid benefits it has the burden to prove benefits should not have been paid; by logical extension of that principal, where benefits have not been paid claimant has the burden to prove that the Department should have paid benefits). In other words, the Department must prove that claimant did not actively seek work during the weeks at issue.

It was not disputed that claimant was a member in good standing of a union that did not allow its members to seek non-union work during the weeks at issue. It also was not disputed that claimant remained in contact with his union during the weeks at issue, and that claimant was capable of accepting and reporting for work if dispatched for work by the union. The sole issue at hearing was whether claimant actively sought work during the weeks at issue because his employer placed him on hold with his union and his name did not appear on the union's out-of-work list. Order No. 19-UI-130550 concluded that claimant did not. The order first reasoned that because claimant's employer placed him on hold with the union, it "prevent[ed] him from receiving job referrals from the union." Order No. 19-UI-130550 at 2. The order further reasoned, "In order to be considered actively seeking work by remaining in contact with his union, [c]laimant needed to be on his union's out of work list." Order No. 19-UI-130550 at 2. The order is incorrect.

However, OAR 471-030-0036(5)(c), the applicable regulation, does not require that claimant's name appear on the union's out-of-work list in addition to its other requirements before he may be considered to have actively sought work by remaining in contact with his union and being capable of accepting an reporting for work when dispatched by the union. Nor does its plain language require that claimant not be placed on "hold" status with the union to otherwise fall within the exception that OAR 471-030-0036(3)(c) establishes for members of closed unions. The fact that claimant's employer put him on hold with the union so that the union would not dispatch him to any work other than for his regular employer does not, without more, establish that claimant was out of contact with the union or was unable to accept and report for work to which the union dispatched him. Order No. 19-UI-130550 incorrectly subjected claimant to requirements that were beyond the scope of OAR 471-030-0036(5)(c).

The Department did not meet its burden to show that claimant did not actively seek work during the weeks at issue. Claimant was therefore eligible to receive benefits for those weeks.

DECISION: Order No. 19-UI-130550 is set aside, as outlined above.

DATE of Service: July 15, 2019

NOTE: This decision reverses an order that denied benefits. Please note that payment of benefits, if any are owed, may take approximately a week 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 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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