

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0593

Reversed
Eligible Week 16-19

PROCEDURAL HISTORY: On May 9, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from April 14, 2019 to April 20, 2019 (decision # 104529). Claimant filed a timely request for hearing. On June 3, 2019, ALJ S. Lee conducted a hearing, and on June 11, 2019 issued Order No. 19-UI-131417, affirming the Department's decision. On June 27, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument to the extent it was based upon the hearing record when reaching this decision.

FINDINGS OF FACT: (1) On August 30, 2018, claimant filed an initial claim for unemployment insurance benefits.

(2) GMK Masonry employed claimant as a mason tender since approximately 2014. The availability of work could depend upon weather and other contractors. On April 10, 2019, GMK notified claimant that there was no work for two to three weeks. On April 15, 2019, GMK notified claimant that he would return to work on April 24, 2019.

(3) Claimant filed a weekly claim for benefits for the week of April 14, 2019 to April 20, 2019 (week 16-19), the week at issue. He reported to the Department that week that he was temporarily unemployed, and that he had completed only two work search activities.

(4) On April 24, 2019, GMK returned claimant to work as scheduled.

CONCLUSIONS AND REASONS: Claimant actively sought work while temporarily unemployed during week 16-19 and is eligible for benefits.

To be eligible to receive benefits, unemployed individuals must 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.*

However, an individual who is temporarily unemployed is considered to be actively seeking work by remaining in contact with and capable of accepting and reporting for suitable work with their regular employer if: (1) there is a reasonable expectation that they will be returning to full time work, or work that equals or exceeds their weekly benefit amount, for their regular employer; (2) the individual is temporarily unemployed due to a lack of work; and (3) the individual is temporarily unemployed for no greater than four weeks between the date the individual last performed services for the employer and the week the individual returns to work. OAR 471-030-0036(5)(b).

The order under review concluded that claimant did not actively seek work during week 16-19 because his belief that he would return to work within four weeks was not reasonable, as the return to work depended upon the weather and another contractor completing their work. *See* Order No. 19-UI-131417 at 6. As such, the order concluded that claimant was required to conduct a minimum of five work seeking activities as a condition of eligibility, and because he did not, he was not eligible for benefits week 16-19. *Id.* However, the record does not support the conclusion that claimant's belief he would return to work within four weeks was not reasonable.

Although claimant's employer might initially have estimated when claimant might return to work, the estimation was based upon the factors as the employer knew them. The employer at that time expected claimant's temporary unemployment to last fewer than four weeks, and communicated that to claimant. Prior to the date claimant claimed benefits for the week at issue, the employer gave claimant a return to work date that also was less than four weeks since the date he last performed services. There is no evidence in this record that periods of temporary unemployment with this employer generally were greater than four weeks, or that claimant had ever had a period of temporary unemployment with this employer during his four years of employment that was greater than four weeks, such that claimant's reliance on the employer's estimate and stated date on which the employer expected claimant to return to work should be considered unreasonable.

To establish eligibility for benefits under OAR 471-030-0036(5)(b), an individual need not show with certainty that they will return to work within four weeks of the date they last performed services. They only need show that they expected to return to work within that time, and that the expectation was reasonable. Where, as here, all evidence suggests the period of temporary unemployment was likely to last fewer than four weeks from the date claimant last performed services, the burden has been met and claimant is eligible for benefits.

DECISION: Order No. 19-UI-131417 is set aside, as outlined above.¹

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

¹ 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.

DATE of Service: July 31, 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

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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