

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0639

Affirmed
Ineligible

PROCEDURAL HISTORY: On May 2, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from February 10, 2019 to April 20, 2019 (decision # 74333). Claimant filed a timely request for hearing. On June 4, 2019 and June 17, 2019, ALJ Wyatt conducted a hearing, and on June 25, 2019 issued Order No. 19-UI-132235, affirming the Department's decision. On July 9, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Claimant filed weekly claims for benefits from February 10, 2019 to April 20, 2019 (weeks 7-19 to 16-19), the weeks at issue.

(2) The Department required claimant to report her work seeking activities when filing her weekly claims for benefits. The work search report included headings for "employer name" and location.

(3) In January 2019, the Department reviewed claimant's work searches and found that claimant was repeating work seeking activities every week, and that in the "employer name" spot on the form she listed only "dental office." Most of the locations claimant listed were "Portland." As a result, claimant's reports did not establish that she made direct contacts with two different employers seeking work during each of the weeks at issue.

(4) On January 30, 2019, the Department sent claimant a letter advising her to record the company name and location, or the online job posting ID number, when filling out the weekly work search report. Claimant received the letter, and on February 5, 2019 called the Department about it. During the call, the Department advised claimant to contact two companies and perform three other activities each week.

(5) After the February 5th call, claimant began reporting varied work seeking activities, but continued to list her direct contacts as "dental office" and, in most cases, "Portland," in the employer name and location spaces on her weekly reports. On April 22, 2019, the Department mailed claimant a letter asking her to provide additional information about her work searches during the weeks at issue; claimant did not respond, and the Department retroactively denied claimant benefits for the weeks at issue.

CONCLUSIONS AND REASONS: Claimant did not actively seek work and is ineligible for benefits during the weeks at issue.

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 few exceptions, none of which apply here, 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.* "Direct contact" means "making contact with an employer . . . to inquire about a job opening or applying for job openings in the manner required by the hiring employer." OAR 471-030-0036(5)(a)(B). The Department paid claimant benefits for the weeks at issue, and therefore has the burden to prove that benefits should not have been paid. *See Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

The Department's rules require that individuals perform five work seeking every week as a condition of receiving benefits, including making two direct contacts with employers asking about job openings or applying for jobs. The Department's rules also require individuals to report their work seeking activities to the Department during each week claimed. The Department advised claimant in advance of the weeks at issue that she was required to record the employer names and locations, or the online job posting ID numbers, for each of the employers she contacted. Despite being so informed, claimant continued to report only that she contacted a "dental office," but provided no location or job posting ID numbers by which the employers could be identified. When asked to provide additional information, claimant did not respond. In the absence of that information, the record fails to show that claimant did, in fact, make two direct employer contacts every week as required.

Claimant testified at the hearings that she did not understand she needed to record the names of the employers she contacted. *See e.g.* Audio Record at 15:10-15:30. She also testified that she could not record the employer names and locations because the online applications she submitted did not include that information. *Id.* However, the record is undisputed that the Department advised claimant in the January 30th letter how to record a direct contact without that information, and that claimant received the letter and contacted the Department about it. Additionally, the work search records claimant submitted into the record at the second hearing were primarily for weeks prior to the weeks at issue, and included evidence of only three employer contacts, each in a different week, during the weeks at issue. Those records do not establish or even suggest that, contrary to her weekly reports, claimant did in fact make the required number of direct employer contacts every week.

The totality of evidence in the record fails to show that claimant made two direct contacts each week with employers to respond to a job opening or apply for work during the weeks at issue. In the absence of that evidence, the record fails to show that claimant actively sought work as required. Claimant is therefore ineligible for benefits during the weeks at issue.

DECISION: Order No. 19-UI-132235 is affirmed.

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

DATE of Service: August 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 Empleo. Si no está de acuerdo con esta decisión, puede presentar una Aplicación 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 ໄດ້ ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄໍາຕັດສິນນີ້.

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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