

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0672

Affirmed
Ineligible

PROCEDURAL HISTORY: On June 11, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work during the weeks of May 12, 2019 through June 8, 2019 (decision # 72838). Claimant filed a timely request for hearing. On July 9, 2019, ALJ Wyatt conducted a hearing, and on July 17, 2019 issued Order No. 19-UI-133549, modifying¹ decision # 72838 by concluding claimant was not available for work or eligible for benefits during the weeks of May 12, 2019 through July 6, 2019. On July 19, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument in reaching this decision.

FINDINGS OF FACT: (1) On May 13, 2019, claimant filed an initial claim for unemployment insurance benefits. Claimant indicated at that time that she was attending school part time.

(2) On May 16, 2019, claimant completed a student eligibility questionnaire for the Department on which she stated that she would "have to find another job" because "school cost a lot of money and I can't afford to drop it" if she were offered work that conflicted with her class schedule. Audio Record at 7:58 to 8:04.

(3) Claimant claimed but was not paid² benefits for the weeks from May 12, 2019 through July 6, 2019 (weeks 20-19 through 27-19), the weeks at issue.

¹ Order No. 19-UI-133549 incorrectly stated that it was affirming the Department's decision. Order No. 19-UI-133549 modified decision # 72838 because decision # 72838 denied benefits for weeks 20-19 through 23-19, and Order No. 19-UI-133549 denied benefits for weeks 20-19 through 27-19.

² EAB has taken notice of this fact, which is contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). Any party that objects to our taking notice of this information 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(2). Unless such objection is received and sustained, the noticed fact will remain in the record.

(4) Claimant sought work as an executive or administrative assistant, receptionist, entry-level purchasing agent, bartender, and retail sales associate during the weeks at issue. Claimant's labor market area was Gresham, Boring, Damascus, Fairview, Northeast Portland, Southeast Portland, Sandy, and Troutdale, Oregon. In claimant's labor market, the usual days and hours customary for the work claimant sought as an executive or administrative assistant, receptionist, and entry-level purchasing agent were Monday through Saturday, from 7:00 a.m. to 6:00 p.m.

(5) During the weeks at issue, claimant was enrolled in school part time at the Aveda Institute for cosmetology. Claimant attended classes Tuesdays through Thursdays each week from 1:00 p.m. to 9:30 p.m. during the weeks at issue. Aveda Institute offered classes for part time students only on Tuesdays through Thursdays. The school considered a part time student who missed a continuous week of classes as "dropped from school." Audio Record at 21:15.

(6) When completing job applications during the weeks at issue, claimant put on her applications that she was available to work full days Fridays through Mondays, and was available to work half days on Tuesdays through Thursdays.

(7) On May 29, 2019, claimant told a Department representative that she would not quit school for work that conflicted with her class schedule.

CONCLUSION AND REASONS: Claimant was not available for work during the weeks of May 12, 2019 through July 6, 2019 and is not eligible to receive benefits for those weeks.

The issue is whether claimant was available for work, within the meaning of Department rules and law, during the weeks at issue, which include May 12 through July 6, 2019. For an individual to be considered "available for work" for purposes of ORS 657.155(1)(c), they must be:

(a) Willing to work full time, part time, and accept temporary work opportunities, *during all of the usual hours and days of the week customary for the work being sought*, unless such part time or temporary opportunities would substantially interfere with return to the individual's regular employment; and

* * *

(c) Not imposing conditions which substantially reduce the individual's opportunities to return to work at the earliest possible time[.]

* * *

OAR 471-030-0036(3) (April 1, 2018) (italics added for emphasis). Claimant has the burden of proof to show that she was available for work during each week at issue. *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).

To accommodate her class schedule during the weeks at issue, claimant put on her employment applications that she was available for work Friday through Monday, and half days on Tuesday through Thursday. Although claimant asserted correctly at hearing and in her written argument that many students find work despite attending classes, and that some of the work she sought offered hours that did not conflict with her class schedule, it is undisputed that claimant's class schedule conflicted with some of the customary days and hours for some of the work claimant sought during the weeks at issue. Audio Record at 16:29 to 17:27; Claimant's Written Argument. Therefore, for each week at issue, claimant was not willing to work *during all of the usual hours and days of the week customary for the work being sought* during those weeks, as is required by ORS 657.155(1)(c) to be eligible for benefits for those weeks. See OAR 471-030-0036(3)(a). In addition, claimant's stated schedule limitations were likely construed by 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 claimant's class schedule. See OAR 471-030-0036(3)(c). The record shows that claimant continued to limit her availability through all the weeks at issue. Even after the Department began denying claimant's weekly claims based on her availability, claimant told the Department she was not willing to stop taking classes or miss classes if an employer were to offer her work that conflicted with her class schedule.

Claimant was not available for work during the weeks at issue. Consequently, she is not eligible for benefits for the weeks from May 12, 2019 through July 6, 2019 (weeks 20-19 through 27-19).

DECISION: Order No. 19-UI-133549 is affirmed.

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

DATE of Service: August 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 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 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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