

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0726

Affirmed
Ineligible

PROCEDURAL HISTORY: On June 19, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not able, available, or actively seeking work during the week of May 26, 2019 through June 1, 2019 (decision # 103810). Claimant filed a timely request for hearing. On July 12, 2019 at 8:15 a.m., ALJ Murdock conducted a hearing at which the employer did not appear, and on July 15, 2019 issued Order No 19-UI-133346, affirming the Department's decision. On July 23, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) As of May 2019, Allcare Management Services LLC employed claimant to work in human resources.

(2) Sometime before May 27, 2019, the employer authorized a leave of absence for claimant. The leave of absence was open-ended and did not have a terminating date. Sometime on or before May 29, 2019, while on that leave, claimant had a doctor's appointment and learned that she might have a serious medical condition. On May 29, 2019, claimant contacted the employer to obtain paperwork to request a leave authorized under the Family and Medical Leave Act (FMLA). Claimant wanted to request a FMLA leave that lasted through June 13, 2019, which claimant thought would give her sufficient time to have the medical testing needed to determine if she had a serious medical condition. However, the employer discharged claimant on May 29, 2019.

(3) May 31, 2019¹, claimant filed a valid claim for unemployment insurance benefits. Claimant claimed benefits for the week of May 26, 2019 through June 1, 2019 (week 22-19), the week at issue. Claimant expected to seek work in her customary field of human resources. The days and hours customary for human resources work was Monday through Friday, 8:00 a.m. to 5:00 p.m.

¹ 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 was not willing to work during week 22-19 because she did not know if she had a serious medical condition that made working inadvisable. On June 5, 2019 (during week 23-19), claimant took a diagnostic imaging test and learned that she did not have a serious medical condition. After June 5, claimant was willing to work.

CONCLUSIONS AND REASONS: Claimant was not available for work during the week of May 26, 2019 through June 1, 2019 and is not eligible to receive benefits for that week.

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 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

(b) Capable of accepting and reporting for any suitable work opportunities within the labor market in which work is being sought, including temporary and part time opportunities; and ***

OAR 471-030-0036(3) (April 1, 2018). At hearing, claimant testified that she was not able to work until she received the test results on June 5, 2019 that ruled out a serious medical condition, and that she was not available for work on May 26 and 27, 2019 (the first two days in week 22-19). Audio Record at 8:56 to 9:12, 9:14 to 9:22, 10:50 to 10:56, 12:05 to 12:09. It is logically inferred from these statements that claimant was unwilling to accept other suitable work opportunities before June 5, 2019, including during all of the usual days and hours customary for her work in human resources during week 22-19. The record therefore shows that claimant more likely than not was not available for work during week 22-19 and was not eligible to receive benefits for that week.

Notably, claimant filed a request for review of Order No. 19-UI-133707, which determined she was not disqualified from benefits based on her discharge, at the same time claimant sought review of the order at issue here, Order No. 19-UI-133346, which determined that claimant was ineligible for benefits during week 22-19 because she was not able, available or actively seeking work. EAB Decision 2019-EAB-0685, mailed simultaneously with this decision, dismissed claimant's application for review of Order No. 19-UI-133707 because that order *allowed* claimant benefits, and there was no basis for further relief. The outcome in this decision is not related to the discharge. Even though Order No. 19-UI-133707 concluded that claimant was not discharged for misconduct and not disqualified from benefits due to the discharge, she still is not eligible to receive benefits for week 22-19 because she was not available for work that week.

DECISION: Order No. 19-UI-133346 is affirmed.

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

DATE of Service: August 26, 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.

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 ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

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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