

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0779-R

Request for Reconsideration Denied
EAB Decision 2019-EAB-0779 Remains Undisturbed
Ineligible

PROCEDURAL HISTORY: On July 5, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from June 9, 2019 to June 29, 2019, and was denied benefits until the reason for the denial ended (decision # 110242). Claimant filed a timely request for hearing. On July 29, 2019, ALJ Wyatt conducted a hearing, and on August 6, 2019 issued Order No. 19-UI-134554, concluding that claimant was not available for work from June 9, 2019 to July 27, 2019.

On August 16, 2019, claimant filed an application for review with the Employment Appeals Board (EAB). On September 18, 2019, EAB issued EAB Decision 2019-EAB-0779, affirming Order No. 19-UI-134554. On September 30, 2019, claimant filed a timely request for reconsideration with EAB.

This decision is issued pursuant to EAB's authority under ORS 657.290(3).

CONCLUSIONS AND REASONS: Claimant's request for reconsideration is denied.

"Any party may request reconsideration to correct an error of material fact or law, or to explain any unexplained inconsistency with Employment Department rule, or officially stated Employment Department position, or prior Employment Department practice." ORS 657.290(3); OAR 471-041-0145(1) (May 13, 2019). The request is subject to dismissal unless it includes a statement that a copy was provided to the other parties, and is filed on or before the 20th day after the decision sought to be reconsidered was mailed. OAR 471-041-0145(2).

Claimant filed a timely request for reconsideration within 20 days of the date EAB Decision 2019-EAB-0779 was mailed. Claimant was not required to declare that a copy of the request for reconsideration was provided to any other parties. Claimant therefore satisfied the procedural requirements for requesting reconsideration.

Claimant requested reconsideration alleging that EAB erred when making EAB Decision 2019-EAB-0779 because EAB erred in concluding that claimant was not willing to accept work consistent with her medical restrictions if her earnings from that work would exceed \$1,080 per month, and providing additional information about when that circumstance changed. Claimant's allegations do not establish that EAB made an error of fact or law, however; her request for reconsideration is therefore denied for the reasons that follow.

As stated in EAB Decision 2019-EAB-0779, EAB concluded that claimant was available for work during the weeks at issue despite limiting her availability to work to 20 hours per week, because that particular limitation was consistent with her medical restrictions at the time and she was still able to perform some work. However, claimant testified consistently throughout the underlying proceedings that she imposed an additional restriction during the weeks at issue, June 9, 2019 through July 27, 2019 (weeks 24-19 through 30-19) by not wanting to exceed \$1,080 per month in earnings because doing so would jeopardize her receipt of social security disability benefits. Despite claimant's unrefuted testimony at the hearing that her employers had historically been willing to work with her and her job developer to negotiate mutually acceptable terms of employment that did not jeopardize her disability benefits, claimant's additional restriction still imposed a condition that affected her availability to work the full 20 hours per week she was medically released to work during the weeks at issue. Although claimant established that she was "absolutely willing and able to accept work" during the weeks at issue, and her sincerity in that regard is not doubted, it is more likely than not that her willingness to work was also limited by her desire not to jeopardize her disability benefits by exceeding \$1,080 in earnings per month. Under OAR 471-030-0036(3) claimant's imposition of that condition means she is not "available for work" as that phrase is defined for the limited purposes of unemployment insurance benefit eligibility. EAB did not err in so finding.

Claimant provided additional information with her request for reconsideration establishing the date upon which she learned that she did not have to restrict her earnings to \$1,080 per month, thereby lifting the additional restriction that limited her availability for work during the weeks at issue. EAB did not err in deciding EAB Decision 2019-EAB-0779 without that information, because claimant had not provided it prior to that decision being issued. Claimant's request for reconsideration also established that EAB did not err in its ultimate conclusion. EAB only decided claimant's availability for the weeks of June 9, 2019 through July 27, 2019 (weeks 24-19 through 30-19). It was not until after that period, on August 16th, that claimant first learned that she did not have to restrict her earnings and that condition would have stopped affecting her availability for work. Therefore, it is likely that claimant's new knowledge of the earning requirements associated with her disability benefits would not have affected claimant's willingness to work or availability to work in June and July 2019. EAB therefore did not err in its decision with respect to the weeks at issue in June and July 2019.

Claimant did not establish that EAB made an error of fact or law that necessitate reconsideration of EAB Decision 2019-EAB-0779. Claimant's request for reconsideration is therefore denied, and EAB Decision 2019-EAB-0779 remains undisturbed. If, as is indicated in claimant's request for reconsideration, she is no longer restricting her availability for work based upon her belief that she had to do so to maintain eligibility for disability benefits, claimant should report that information directly to the Department so the Department can reassess claimant's availability for benefits during any weeks claimed after August 16th.

DECISION: Claimant's request for reconsideration is denied. EAB Decision 2019-EAB-0779 remains undisturbed.

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

DATE of Service: October 10, 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 ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

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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