

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0827

Modified
Not Eligible April 21, 2019 to April 27, 2019
Order No. 19-UI-134533 Vacated as to April 28, 2019 through May 11, 2019

PROCEDURAL HISTORY: On June 27, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work because she was outside her labor market, and limited the denial of benefits on that basis to the week of April 21, 2019 through April 27, 2019 (decision # 74748). Claimant filed a timely request for hearing. On August 2, 2019, ALJ Griffin conducted a hearing, and on August 6, 2019 issued Order No. 19-UI-134533, modifying decision # 74748 to uphold the denial of benefits for April 21, 2019 through April 27, 2019, but also to allow benefits for the week of April 28, 2019 through May 4, 2019, and to deny benefits for the week of May 5, 2019 through May 11, 2019. On August 28, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's argument when reaching this decision.

JURISDICTIONAL RULING: The ALJ erred in considering evidence about and deciding the issue of claimant's availability for the weeks of April 28, 2019 through May 11, 2019. Although the Department sometimes issues open-ended denials of benefits that deny benefits for a particular period *and* until the circumstances causing the denial cease to exist. In this case, however, the Department's administrative decision denied benefits *only* for the specific period of April 21, 2019 through April 27, 2019. Because the Department issued only a period claimed denial of benefits in this case, and no party to the hearing waived right to notice of that issue, the ALJ did not have jurisdiction to rule on claimant's availability for those weeks. Order No. 19-UI-134533 is therefore vacated as to those weeks. The remainder of this decision focuses exclusively on the week of April 21, 2019 through April 27, 2019, the week over which EAB has jurisdiction.

FINDINGS OF FACT: (1) On January 7, 2019, claimant filed an initial claim for unemployment insurance benefits. Claimant filed a weekly claim for benefits for the week of April 21, 2019 through April 27, 2019, the week at issue.

(2) During the week at issue, claimant's labor market, based upon her address of record with the Department, was the Klamath Falls and Chiloquin, Oregon area. That week, claimant stayed in Green Valley, California. Claimant's job searching activities included internet searches for work in the Klamath Falls, Oregon area.

CONCLUSIONS AND REASONS: Claimant was not available for work.

ORS 657.155(1)(c) provides that, as a condition of being eligible for benefits, an individual must be "available for work" during each week claimed. ORS 657.155(2)(a) further provides that "[a]n individual who leaves the individual's normal labor market area for the major portion of any week is presumed to be unavailable for work within the meaning of this section." The presumption of unavailability may only be overcome if the individual conducted a bona fide work search in the labor market area in which the individual spent the major portion of the week or was required to be *outside* the individual's normal labor market area to apply for suitable employment *within* the normal labor market area. ORS 657.155(2)(b) (emphasis added). OAR 471-030-0036(3)(d) further defines "availability" to require an individual to be physically present in the normal labor market every day of the week unless (1) the individual was actively seeking work outside the labor market, or (2) the individual was only outside her labor market for less than half the week and no opportunity to work was missed because of the absence.

In sum, the laws and rules say that in order to receive unemployment insurance benefits, claimants must remain inside their normal labor markets (as established by the Department) for the majority of every week claimed unless they are either seeking work outside their labor markets, or required to go outside the labor market to seek work inside it. In this case, claimant was outside her labor market during the week of April 21, 2019 to April 27, 2019 because she was in Green Valley, California instead of the Chiloquin/Klamath Falls, Oregon area. She is not eligible for benefits for that week because she was not in Green Valley, California to look for work there, and she was not required to go to Green Valley to seek work in the Chiloquin/Klamath Falls area. For those reasons, claimant cannot be considered "available for work" during the week of April 21, 2019 to April 27, 2019, and must be denied benefits for that week on that basis.

Please note, claimant has also filed an application for review of Order No. 19-UI-134534, the order that concluded claimant actively sought work from April 21, 2019 to May 11, 2019, and was allowed benefits during those weeks for that reason. That application for review will be addressed in separate EAB decision, but mailed on the same date and in the same envelope as this decision.

Claimant's applications for review of Order No. 19-UI-134534 and 19-UI-134533 also referenced a "3rd denial pending with OED under the decision # 80220" that was "related to late filing." That case is *not* before EAB for decision at this time for procedural reasons. EAB referred claimant's application for review to the Oregon Employment Department for review, and, potentially, referral to the Office of Administrative Hearings (OAH) for proceedings on claimant's request for hearing and, potentially, the late filing issue. If claimant has any questions about decision # 80220, or the status of the 3rd denial, claimant must direct those questions to the Department, or, if the case has been referred as a request for hearing, direct them to OAH.

DECISION: Order No. 19-UI-134533 is modified, as outlined above.

J. S. Cromwell and S. Alba;

D. P. Hettle, not participating.

DATE of Service: September 30, 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

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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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