

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0839

Affirmed
Ineligible Weeks 09-19 through 27-19

PROCEDURAL HISTORY: On July 12, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from February 24, 2019 through July 6, 2019 (decision # 123419). Claimant filed a timely request for hearing. On August 7, 2019, ALJ Frank conducted a hearing, and on August 9, 2019 issued Order No. 19-UI-134967, affirming the Department's decision. On August 13, 2019, ALJ M. Davis issued Amended Order 19-UI-134967, amending Order No. 19-UI-134967 by correcting errors made in the original Order.¹ On September 3, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: FINDINGS OF FACT: (1) Brusco Tug & Barge Inc. employed claimant as a merchant marine from September 26, 2018 to June 26, 2019. Claimant's job with the employer typically required him to be at sea for approximately 30 days after which he would be off work for approximately the same length of time.

(2) On December 28, 2018, claimant filed an initial claim for unemployment insurance benefits.

(3) On or about January 19, 2019, claimant's driver's license was suspended following an arrest for Driving under the Influence of Intoxicants (DUII). Shortly thereafter, claimant boarded a vessel for the employer and worked at sea until disembarking on February 24, 2019. During that time claimant notified the employer of his arrest, and that as a result thereof, he would be unable to work until his legal obligations, court appearances, assessments and diversion classes he was required to attend to resolve his DUII proceeding were completed.

(4) Claimant claimed benefits for the weeks including February 24 through July 6, 2019 (weeks 09-19 through 27-19). He was not paid benefits for week 09-19 because he earned \$700 that week, which was

¹ Amended Order 19-UI-134967 at 1-3.

more than his weekly benefit amount of \$624.² The Department gave him waiting week credit for week 10-19 and paid him benefits for weeks 11-19 through 27-19, the weeks at issue.

(5) During the weeks at issue, claimant sought work as a merchant marine. Claimant's labor market area was the West Coast of the United States. Other than out of Coos Bay, Oregon, where he resided, claimant sought work out of San Francisco, California and Cathlamet and Seattle, Washington. In claimant's labor market, the customary days and hours for work as a merchant marine were all days and all hours. Claimant's potential employers sometimes gave less than 24 hours' notice of available work opportunities.

(6) During each of the weeks at issue, claimant, claimant did not have a valid driver's license and was unable to report for work due to a lack of transportation. From February 25, 2019 through June 19, 2019, claimant also was unable to report for work due to court appearances, counselor assessments or diversion classes he was legally obligated to attend in connection with his DUII.

(7) On May 28, 2019, the employer offered claimant a work trip which he declined. Claimant declined the work opportunity because he had three weeks of required diversion classes remaining. On June 25, 2019, claimant declined another work opportunity originating in Cathlamet, Washington. Claimant declined that work opportunity because he had only 22 hours' notice and thought he would lack transportation to Cathlamet.

(8) On July 12, 2019, the Department interviewed claimant over the phone because it had received information from the employer that claimant had declined to accept its latest offer of work, for which the employer discharged claimant. When a Department employee questioned claimant about it, claimant explained, "I couldn't get to the jobsite out of state due to legal obligations." Transcript at 5-6. When claimant was asked, "Were you not able to drive the whole time?" claimant responded, "No. I don't have a license. I'm not able to get to work." Transcript at 6. Claimant also stated that he had not been able to work from February 25, 2019 until June 19, 2019 due to his diversion classes. Transcript at 7.

CONCLUSIONS AND REASONS: Claimant was not unemployed during week 09-19 and for that reason is ineligible for benefits for that week. Claimant was not available for work during weeks 10-19 through 27-19 and for that reason is ineligible for benefits for those weeks.

Not Unemployed. Only "unemployed" individuals are eligible for benefits. ORS 657.155. For the purposes of ORS 657.155(1), an individual is deemed "unemployed" in any week of less than full-time work if the remuneration paid or payable to the individual for services performed during the week is less than the individual's weekly benefit amount. ORS 657.100; ORS 657.155(6).

Although the Department's administrative decision concluded claimant was ineligible for benefits for week 09-19 because he was not available for work, the Department's witness testified at hearing that week 09-19 was no longer at issue because claimant had "excess earnings" during that week. Transcript at 5. In other words, the Department's witness asserted that claimant was ineligible for benefits for that

² We take notice of these facts, which are contained in Employment Department records. Any party that objects to our doing so 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(3) (October 29, 2006). Unless such objection is received and sustained, the noticed facts will remain in the record.

week because claimant earned more than his weekly benefit amount. Department records establish that claimant earned \$700 during week 09-19 which was greater than his weekly benefit amount of \$624. Accordingly, claimant is ineligible for benefits for that week because he was not “unemployed.”

Available for Work. 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). An individual must meet certain minimum requirements to be considered “available for work” for purposes of ORS 657.155(1)(c). OAR 471-030-0036(3) (April 1, 2018). Among those requirements are that the individual be willing to work and capable of reporting to full time, part time and temporary work opportunities throughout the individual’s labor market. *Id.* Where the Department seeks to deny benefits it has already paid, the Department has the burden to show that claimant was not eligible to receive those benefits *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

Here, claimant was not able to report for all suitable work opportunities throughout his labor market during the weeks at issue due either to legal obligations which prevented him from leaving the area until June 19, 2019 and/or a lack of transportation which prevented him from reporting for all suitable work during each of the weeks at issue. Although he asserted at hearing that his legal obligations relating to the DUII ended on June 19 and that he had a means of transportation after June 25, he did not dispute that he told a Department employee on July 12, 2019 that he was “not able to get to work” during all of the weeks at issue. Transcript at 32-33. Accordingly, it may be inferred from the record as a whole that claimant was not capable of reporting for all suitable work opportunities during each of the weeks at issue due to a lack of transportation.

Claimant is not eligible for benefits for week 09-19 because he was not unemployed during that week. Claimant is not eligible for benefits for weeks 10-19 through 27-19 because he was not available for work during those weeks.

DECISION: Order No. 19-UI-134967 is affirmed.

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

DATE of Service: October 8, 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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