

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0847

Affirmed
Benefits Are Not Payable

PROCEDURAL HISTORY: On July 31, 2019, the Oregon Employment Department (the Department) served three notices of three administrative decisions: decision # 152700 concluded that benefits based upon wages from Malheur Co School District #8C were not payable from July 7, 2019 through July 27, 2019, and were denied through August 17, 2019; decision # 153354 concluded benefits based upon wages from Malheur Co School District #8C were not payable from June 2, 2019 through July 6, 2019, and were denied through August 15, 2019; and decision # 160637 concluded that benefits based upon wages from Nyssa Elementary School were not payable from July 7, 2019 through July 27, 2019, and were denied through August 17, 2019.

On August 1, 2019, the Department served three additional notices of administrative decisions: decision # 160958 concluded benefits based upon wages from Nyssa Elementary School were not payable from May 26, 2019 through July 6, 2019, and were denied through August 19, 2019; decision # 91014 concluded benefits based upon wages from Malheur Co School District # 29 were not payable from July 7, 2019 to July 27, 2019, and were denied through August 17, 2019; and decision # 91521 concluded benefits based upon wages from Malheur Co School District # 29 were not payable from May 26, 2019 to July 6, 2019, and were denied through August 17, 2019.

Claimant filed timely requests for hearing on all six decisions. The Office of Administrative Hearings (OAH) mailed notice of three consolidated hearings, all scheduled for August 22, 2019: a consolidated hearing on decisions # 160637 and 160958 at 1:30 p.m.; a consolidated hearing on decisions # 91014 and 91521 at 2:30 p.m.; and a consolidated hearing on decisions # 152700 and 153354 at 3:30 p.m.

ALJ M. Davis conducted each of the three hearings, and on August 23, 2019 issued five orders: Order No. 19-UI-135536 affirmed decision # 152700; Order No. 19-UI-135526 affirmed decision # 160637; Order No. 19-UI-135525 affirmed decision # 160958; Order No. 19-UI-135528 affirmed decision # 91014; and Order No. 19-UI-135530 affirmed decision # 91521. On August 26, 2019, the ALJ issued Order No. 19-UI-135537, affirming decision # 153354.

On August 30, 2019, claimant filed timely applications for review of all six orders with the Employment Appeals Board (EAB). Pursuant to OAR 471-041-0095 (May 13, 2019), EAB consolidated its review of Orders No. 19-UI-135536, 19-UI-135526, 19-UI-135525, 19-UI-135528, 19-UI-135530, and 19-UI-135537. For case-tracking purposes, this decision is being issued in sextuplicate (EAB Decisions 2019-EAB-0843, 2019-EAB-0844, 2019-EAB-0845, 2019-EAB-0846, 2019-EAB-0847, and 2019-EAB-0848).

EAB did not consider claimant's written argument when reaching this decision because they did not include a statement declaring that they provided a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). Even if we had, the outcome of this case would remain the same. As she did at the hearing, claimant's written argument suggested that she should be entitled to benefits during the summer recess periods at issue because she customarily works as a full time teacher, not a substitute, and the fact that she worked as a substitute in order to fill the gap between full time employment opportunities should not operate to deny her benefits under ORS 657.167. However, the threshold question under ORS 657.167 is whether claimant was "unemployed" during the period preceding the recess; in this case, claimant was not, because her earnings from substitute teaching work at Nyssa Elementary exceed her weekly benefit amount. The fact that claimant had reasonable assurance of work in the same or similar capacity after the recess suggests that she had reasonable assurance, notwithstanding that the assurance was for substitute work rather than the full time work she had during her base years.

EAB reviewed the records developed at the consolidated hearings under review. On *de novo* review and pursuant to ORS 657.275(2), the six orders under review are **adopted**.

DECISION: Orders No. 19-UI-135536, 19-UI-135526, 19-UI-135525, 19-UI-135528, 19-UI-135530, and 19-UI-135537 are affirmed.

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

DATE of Service: October 3, 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

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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