

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0854-R

Reversed
Not Ineligible

PROCEDURAL HISTORY: On August 21, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from January 28, 2018 to May 5, 2018, May 13, 2018 to June 30, 2018, July 8, 2018 to August 4, 2018, and August 12, 2018 to August 18, 2018, and denying benefits for those weeks (decision # 103147). On September 10, 2018, decision # 103147 became final without claimant having filed a timely request for hearing.

On November 13, 2018, claimant filed a late request for hearing. On November 16, 2018, ALJ Kangas issued Order No. 18-UI-119840, dismissing claimant's late request for hearing subject to claimant's right to renew the request by responding to an appellant questionnaire by November 30, 2018. On November 27, 2018, claimant submitted a questionnaire response. On March 12, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

On March 14, 2019, EAB issued Employment Appeals Board Decision 2019-EAB-0267, dismissing claimant's application for review as late without a showing of good cause. On April 8, 2019, claimant filed a petition for judicial review with the Oregon Court of Appeals. On July 8, 2019, claimant filed an opening brief with the Oregon Court of Appeals.

On July 25, 2019, EAB filed a notice of withdrawal of order for purposes of reconsideration pursuant to ORS 183.482(6) and ORAP 4.35. On July 31, 2019, EAB issued Employment Appeals Board Decision 2019-EAB-0267-R, vacating Employment Appeals Board Decision 2019-EAB-0267, reversing Order No. 18-UI-119840, and remanding the case to the Office of Administrative Hearings (OAH) for further proceedings.

On July 31, 2019, OAH mailed notice of a hearing scheduled for August 15, 2019. On August 15, 2019, ALJ M. Davis conducted a hearing, and on August 20, 2019 issued Order No. 19-UI-135275, allowing claimant's request for hearing and affirming decision # 103147. On September 9, 2019, claimant filed an application for review of Order No. 19-UI-135275 with EAB.

On September 16, 2019, EAB issued Employment Appeals Board Decision 2019-EAB-0854, adopting Order No. 19-UI-135275's findings and conclusions allowing claimant's late request for hearing, but remanding the matter to OAH for additional proceedings on the actively seeking work issue. On September 17, 2019, OAH mailed notice of a hearing scheduled for October 4, 2019. On October 4, 2019, ALJ M. Davis conducted a hearing. On October 9, 2019, OAH returned the case to EAB pursuant to Employment Appeals Board Decision 2019-EAB-0854.¹

FINDINGS OF FACT: (1) On January 29, 2018, claimant filed an initial claim for unemployment insurance benefits. Claimant claimed benefits for the weeks including January 28, 2018 to May 5, 2018 (weeks 5-18 to 18-18), May 13, 2018 to June 30, 2018 (weeks 20-18 to 26-18), July 8, 2018 to August 4, 2018 (weeks 28-18 to 31-18), and August 12, 2018 to August 18, 2018 (week 33-18), the weeks at issue.

(2) During each of the weeks at issue, claimant went to a WorkSource office to conduct a job search, networked with former coworkers or church friends, and visited the job search websites "Indeed.com," "Craigslist.com," and "Monster.com." Exhibit 3. During January 2018, claimant made direct contact or applied for work with ten potential employers or managers; during February 2018, claimant made direct contact with eighteen potential employers. Exhibit 2.

(3) During the week of February 18, 2018 to February 24, 2018 (week 8-18), claimant contacted or applied for jobs with six potential employers and conducted at least four other work seeking activities.² Every week from February 25, 2018 to May 5, 2018 (weeks 9-18 to 18-18), May 13, 2018 to June 30, 2018 (weeks 20-18 to 26-18), July 8, 2018 to August 4, 2018 (weeks 28-18 to 31-18), and August 12, 2018 to August 18, 2018 (week 33-18), claimant contacted, applied for jobs, or interviewed with five potential employers and conducted at least four other activities.

CONCLUSIONS AND REASONS: Claimant actively sought work as required every week during the weeks at issue.

To be eligible to receive benefits, unemployed individuals must actively seek work during each week claimed. ORS 657.155(1)(c). For purposes of ORS 657.155(1)(c), an individual is actively seeking work when doing what an ordinary and reasonable person would do to return to work at the earliest opportunity. OAR 471-030-0036(5)(a). With few exceptions, none of which apply here, individuals are "required to conduct at least five work seeking activities per week, with at least two of those being direct contact with an employer who might hire the individual." *Id.* "Direct contact" means "making contact with an employer . . . to inquire about a job opening or applying for job openings in the manner required by the hiring employer." OAR 471-030-0036(5)(a)(B).

The record establishes that during the weeks at issue between February 18, 2018 and August 18, 2018, claimant made five or six direct contacts with employers and performed at least four other work-seeking

¹ Because we conclusively determined in Employment Appeals Board Decision 2019-EAB-0854 that claimant had good cause for his late request for hearing, that issue will not be addressed any further.

² Claimant's weekly work seeking activities during each of the weeks at issue included going to a WorkSource Oregon office and checking "Indeed.com," "Craigslist.com," and "Monster.com," which totals at least four activities every week.

activities. Claimant's work search therefore exceeded the minimum requirements set forth in OAR 471-030-0036(5)(a), and establishes that he was "actively seeking work" during those weeks claimed.

During the weeks of January 28, 2018 to February 3, 2018 (week 5-18), February 4, 2018 to February 10, 2018 (week 6-18), and February 11, 2018 to February 17, 2018 (week 7-18), the record shows that claimant performed at least four work seeking activities each week that did not involve making direct contacts with employers. Claimant's activities therefore exceeded the three work seeking activities required by OAR 471-030-0036(5)(a).

The only remaining issue is whether claimant performed a sufficient number of "direct contact" work seeking activities during those three weeks. Claimant did not provide week-by-week documentation of his direct contact activities during those weeks. However, claimant established that he made ten direct contacts in January 2018 and another eighteen in February 2018. While it is possible that claimant did not perform any of those twenty-eight work seeking activities during the weeks of January 28, 2018 to February 17, 2018, it is unlikely that is the case for the reasons that follow.

Claimant did not file his initial claim for benefits until the end of January 2018, and it is unlikely that the ten work seeking activities he documented for January 2018 occurred prior to his initial claim. It is therefore reasonable to infer that claimant's ten direct contacts in January 2018 likely occurred during the latter part of the month. Claimant's direct contact records for the other 23 weeks at issue in this case also demonstrate that he consistently sought work by making about the same number of direct contacts every week. For example, his direct contact records do not show that he clustered the majority of his direct contact activities into one week and skipped making direct contacts in the other weeks he claimed. Because claimant consistently performed the same kind of direct contact activity week after week during the weeks in which he documented his direct contacts, and presented some evidence, albeit less detailed, suggesting he performed similar activities during the weeks in which he did not document his direct contacts, it is reasonable to infer that claimant's work searches in the undocumented weeks was similar to his work search in the weeks he documented.

Based upon claimant's direct contact activity records demonstrating that he consistently exceeded the two direct contact requirement over a span of 23 weeks, the total number of direct contacts claimant performed each month during January and February 2018, and the likelihood that many of those direct contacts occurred during the three remaining weeks at issue, it is reasonable to infer that claimant likely made direct contact with at least two potential employers each week from January 28, 2018 to February 17, 2018 (weeks 5-18 to 7-18). Claimant's activities during those three weeks therefore satisfied the requirement under OAR 471-030-0036(5)(a) that he make a minimum of two direct contacts every week as a condition of receiving unemployment insurance benefits.

Claimant's work seeking activities likely met the requirements set forth in ORS 657.155 and OAR 471-030-0036(5)(a). Claimant is not ineligible for benefits during the weeks at issue because of a failure to actively seek work.³

³ This decision is confined to the issue of whether or not claimant sought work as required. We note that if the Department had denied claimant benefits for failing to report his direct contacts, rather than failing to make any direct contacts, the outcome of this decision would likely have been different.

DECISION: Order No. 19-UI-135275 is set aside, as outlined above. Claimant is not ineligible for benefits because of his work searches during weeks including January 28, 2018 to May 5, 2018 (weeks 5-18 to 18-18), May 13, 2018 to June 30, 2018 (weeks 20-18 to 26-18), July 8, 2018 to August 4, 2018 (weeks 28-18 to 31-18), and August 12, 2018 to August 18, 2018 (week 33-18).

J. S. Cromwell, D. P. Hettle, and S. Alba

DATE of Service: October 25, 2019

NOTE: This decision reverses an order that denied benefits. Please note that payment of benefits, if any are owed, may take approximately a week for the Department to complete.

NOTE: This decision on reconsideration will be filed with the Oregon Court of Appeals as required by ORS 183.482 and ORAP 4.35.

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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 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
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