

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-1084

Reversed
Eligible

PROCEDURAL HISTORY: On October 7, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not eligible to receive benefits for the period of September 1, 2019 through September 7, 2019 because claimant did not actively seek work (decision # 132845). Decision # 132845 stated that the laws and rules used to make the decision were ORS 657.155 and ORS 471-030-0036 (December 8, 2019), and did not state that claimant failed to provide information in accordance with Department rules or cite OAR 471-030-0025 (January 11, 2018). Claimant filed a timely request for hearing. On October 23, 2019, the Office of Administrative Hearings (OAH) served notice of a hearing on November 6, 2019. The notice from OAH did not state that failure to provide information to the Department was an issue for the hearing or cite OAR 471-030-0025 (January 11, 2018). On November 6, 2019, ALJ Seideman conducted a hearing, stated that the issues for the hearing were if claimant was able, available and actively seeking work, and reviewed the relevant law. Audio Record at 4:22 to 6:13. At the hearing, claimant did not waive his right to notice of the issue regarding a failure to provide information to the Department. On November 8, 2019, ALJ Seideman issued Order No. 19-UI-139492, concluding that claimant failed to provide information in accordance with Department rules, and that claimant did not actively seek work for the period of September 1, 2019 through September 7, 2019. On November 13, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On September 8, 2019, claimant restarted an unemployment benefits insurance claim.

(2) On August 29, 2019, claimant worked for his regular employer, TFT Construction, Inc. On that day, TFT Construction, Inc. laid claimant off work due to a lack of work because the employer's plant became inoperable. The employer told claimant he would return to full time work on Monday, September 9, 2019 because the employer would purchase the supplies necessary to return to work from another company.

(3) During the week of September 1, 2019 through September 7, 2019 (week 36-19), claimant remained in contact with and capable of reporting to work for TFT Construction, Inc.

(4) Claimant claimed benefits for week 36-19. When claiming week 36-19, claimant reported that he was on a temporary layoff, and reported two work search activities. Claimant mistakenly reported that he would return to work on October 7, 2019. The Department denied benefits for week 36-19.

(5) On September 9, 2019, claimant returned to full time work for TFT Construction, Inc.

(6) On September 10, 2019, the Department sent claimant a letter requesting information about his work search activities during week 36-19. Claimant did not receive the letter or respond to it.

CONCLUSIONS AND REASONS: Order No. 19-UI-139492 did not have jurisdiction to decide that claimant failed to provide information in accordance with Department rules. Claimant was eligible for benefits for the period of September 1, 2019 through September 7, 2019.

Failure to Provide Information. Order No. 19-UI-139492 concluded that claimant was not eligible for benefits for week 36-19 because he failed to respond to a request for information from the Department about his work search activities during week 36-19, as required by OAR 471-030-0025.¹ The order further concluded that claimant was not eligible for benefits for week 36-19 because he did not conduct an adequate work search during week 36-19.² However, the record shows claimant was eligible for benefits for week 36-19.

The order under review did not have jurisdiction to conclude that claimant was ineligible for benefits for week 36-19 due to his failure to provide information to the Department. The administrative decision did not list failure to provide information to the Department as a reason for denying week 36-19. The notice of hearing did not state that failure to provide information would be an issue for the hearing. The ALJ did not state at hearing that failure to provide information would be an issue for the hearing, or ask claimant if he was willing to waive his right to notice that the additional issue would be included in the hearing. Because claimant did not knowingly consent to have OAH adjudicate his failure to provide information to the Department in response to the Department's September 10, 2019 letter to him, principles of due process require that the portion of Order No. 19-UI-139492 concluding that claimant was ineligible for benefits for week 36-19 due to his failure to provide information to the Department be reversed.

Actively Seeking Work. 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)(December 8, 2019). With limited exceptions, 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." OAR 471-030-0036(5). An individual who is temporarily unemployed is considered to be actively seeking work by remaining in contact with and capable of accepting and reporting for suitable work with their regular employer if: (1) there is a reasonable expectation that they will be returning to full time work, or work that equals or exceeds their weekly benefit amount, for their regular employer; (2) the individual is temporarily unemployed due to a lack of work; and (3) the individual is temporarily unemployed for no greater than

¹ Order No. 19-UI-139492 at 2.

² Order No. 19-UI-139492 at 3.

four weeks between the date the individual last performed services for the employer and the week the individual returns to work. OAR 471-030-0036(5)(b).

Claimant met his burden to show that the Department should have paid him benefits for week 36-19 because he was temporarily unemployed and actively seeking work during week 36-19. *See Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976) (where the Department has paid benefits it has the burden to prove benefits should not have been paid; by logical extension of that principal, where benefits have not been paid claimant has the burden to prove that the Department should have paid benefits). Claimant remained in contact with TFT Construction, Inc. during week 36-19, and conducted two other work search activities. Despite claimant's inadvertent error in reporting the date that he would return to work when he claimed week 36-19, the record shows that claimant's employer told claimant when it laid him off that he would be returning to full time work on September 9, 2019. Claimant was temporarily unemployed due to a lack of work with his regular employer for a period that did not exceed four weeks between his last day of work on August 29, 2019, and the day TFT Construction, Inc. told him he would return to work, on September 9, 2019. Pursuant to OAR 471-030-0036(5)(b), claimant was actively seeking work during week 36-19.

Claimant is eligible to receive benefits for week 36-19.

DECISION: Order No. 19-UI-139492 is set aside, as outlined above.

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

DATE of Service: December 17, 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: 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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