

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-1184

Affirmed
Ineligible

PROCEDURAL HISTORY: On November 15, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from October 27, 2019 through November 9, 2019 (decision # 145446). Claimant filed a timely request for hearing. On December 10, 2019, ALJ Frank conducted a hearing, and on December 18, 2019, issued Order No. 19-UI-141396, modifying decision # 145446 and concluding claimant was not available for work from October 27, 2019 through November 30, 2019. On December 21, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On October 28, 2019, claimant's regular employer laid him off work. At that time, the employer told claimant he would return to full time work on December 2, 2019. At all times relevant herein, claimant was a welder and a member in good standing of a closed union.

(2) On October 28, 2019, claimant filed an initial application for unemployment compensation benefits online. Claimant claimed and was denied benefits for each week from October 27, 2019 through November 30, 2019 (weeks 44-19 through 48-19), the weeks at issue.

(3) During the weeks at issue, claimant's labor market area was the Portland metropolitan area. Welding is performed all days and all hours in claimant's labor market. Claimant remained in contact with his union during all the weeks at issue.

(4) During the weeks at issue, claimant attended school at Clackamas Community College on Monday and Wednesday from 1:00 p.m. to 3:50 p.m., Tuesday and Thursday from 1:00 p.m. to 3:50 p.m., and Friday from 8:00 a.m. to 10:50 a.m., except that claimant did not attend school on November 27 through 29, 2019. Claimant was attending school to obtain a degree in welding technology. The Veterans' Administration vocational rehabilitation program helped pay for his degree. If claimant stopped attending school before he obtained his degree, he would have to pay the Veterans' Administration the funds it had provided for his degree.

(5) Claimant had to complete two more terms before he completed his degree. Claimant was not willing to stop attending school or miss classes during the weeks at issue because he did not want to have to reimburse the Veterans' Administration for the funding it had already provided toward his degree. He was willing to leave one of his classes an hour early to work.

(6) Claimant was willing to work a swing shift for the employer. The employer accommodated claimant's school schedule by allowing claimant to work a swing shift. Working a swing shift, claimant worked from 3:30 p.m. to 12:00 a.m., and missed 1.5 to 2 hours of work per week to attend school.

CONCLUSIONS AND REASONS: Claimant was not available for work or actively seeking work during the weeks of October 27, 2019 through November 30, 2019 (weeks 44-19 through 48-19), and is not eligible to receive benefits for those weeks.

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). Claimant has the burden to show that he was eligible for benefits pursuant to ORS 657.155(1)(c). *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).

For an individual to be considered "available for work" for purposes of ORS 657.155(1)(c), they must be:

(a) Willing to work full time, part time, and accept temporary work opportunities, during all of the usual hours and days of the week customary for the work being sought, unless such part time or temporary opportunities would substantially interfere with return to the individual's regular employment; and

(b) Capable of accepting and reporting for any suitable work opportunities within the labor market in which work is being sought, including temporary and part time opportunities; and

(c) Not imposing conditions which substantially reduce the individual's opportunities to return to work at the earliest possible time [.]

* * *

OAR 471-030-0036(3) (December 8, 2019).

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). For an individual who is a member in good standing of a union that does not allow members to seek non-union work, such individual is actively seeking work by remaining in contact with that union and being capable of accepting and reporting for work when dispatched by that union. OAR 471-030-0036(5)(c).

Claimant was not available for work during the weeks at issue because he was attending school, and not willing to stop school or miss classes, during all of the usual hours and days that welding work was customarily performed in his labor market area. Moreover, even though claimant's employer accommodated his school schedule when claimant was working by having claimant work a swing shift, claimant's willingness to work only a swing shift was a condition that substantially reduced his opportunities to return to work at the earliest possible time. Moreover, claimant missed 1.5 to 2 hours of work to attend school even when he worked swing shift. Nor was claimant actively seeking work during the weeks at issue. Claimant was a member in good standing of a closed union. Although claimant remained in contact with his union during the weeks at issue, claimant was not capable of reporting to work during hours that conflicted with his class schedule if dispatched by the union. Claimant therefore was not available for work, and did not actively seek work, during weeks 44-19 through 48-19, and is ineligible for benefits for those weeks.

DECISION: Order No. 19-UI-141396 is affirmed.

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

DATE of Service: January 23, 2020

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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