

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0039

Order No. 20-UI-142494 Affirmed ~ Ineligible
Order No. 20-UI-142495 Affirmed ~ Overpayment

PROCEDURAL HISTORY: On October 15, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work and was ineligible for benefits the week of October 6 through October 12, 2019 (decision # 92022). On November 4, 2019, decision # 92022 became final without a request for hearing having been filed. On December 11, 2019, the Department served notice of another administrative decision assessing a \$648 overpayment based on decision # 92022 and requiring claimant to either repay that amount or have it deducted from future benefits otherwise payable (decision # 110611). On December 14, 2019, claimant filed a timely request for hearing regarding decision # 110611 and a late request for hearing regarding decision # 92022.

On December 26, 2019, the Office of Administrative Hearings (OAH) served notice of a consolidated hearing scheduled for January 10, 2020 to consider whether there was good cause for claimant's late request for hearing regarding decision # 92022, whether claimant actively sought work, was able to work and was available for work during the week at issue, and whether claimant was paid benefits for that week to which she was not entitled and liable to repay such amount or have it deducted from future benefits payable.

On January 10, 2020, ALJ Frank conducted the hearing, and on January 13, 2020, issued Order No. 20-UI-142494, allowing claimant's late request for hearing regarding decision # 92022, and affirming decision # 92022 by concluding claimant was not available for work or eligible for benefits for week 41-19, and Order No. 20-UI-142495, modifying decision # 110611 by concluding claimant was overpaid \$648, but was not liable to repay that amount to the Department, and instead was liable to have that amount deducted from future benefits otherwise payable to claimant. On January 17, 2020, claimant filed applications for review of both orders with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (May 13, 2019), EAB consolidated its review of Orders No. 20-UI-142494 and 20-UI-142495. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2020-EAB-0039 and 2020-EAB-0038).

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the portion of Order No. 20-UI-142494 allowing claimant's late request for hearing on decision # 92022 and Order No. 20-UI-142495 are **adopted**. Only that portion of Order No. 20-UI-142494 concluding claimant was ineligible for benefits for the week of October 6 to October 12, 2019 (week 41-19) will be addressed below.

FINDINGS OF FACT: (1) On July 1, 2019, claimant filed an initial claim for unemployment insurance benefits. The Department determined that claimant's weekly benefit amount was \$648.

(2) Sometime after July 1, 2019, a Department representative reviewed claimant's weekly claim history and noticed that claimant had been reporting work searches with potential employers that were located outside of her labor market area of Yakima, Washington. On October 9, 2019, the representative contacted claimant to discuss claimant's reported work searches. During their discussion, the representative questioned claimant about whether she was immediately capable of accepting and reporting for the work she reportedly sought in states that were located a substantial distance from her labor market area. Claimant responded that she would be capable, but that it would probably take her 30 to 45 days and \$10,000 in resources to do so. Audio Record at 20:45 to 21:30. The representative told claimant that because she was not immediately available to accept such work, going forward, she was required to seek work within her labor market area.

(3) Subsequently, claimant claimed and was paid \$648 in benefits for the week of October 6 through October 12, 2019 (week 41-19), the week at issue. When claiming benefits for that week, claimant reported work searches that occurred on October 11 and 12, 2019, just days after her discussion with the Department representative. Those work searches were for accounting, supervisory and management jobs with employers in Connecticut, Missouri, Illinois, Florida, and Washington, D.C. She also sought work in Oregon, Alaska, and Virginia. Claimant sought no work within her labor market area. Claimant believed that with modern technology, living in an area that was distant from an employer did not mean she was not available for work for such an employer.

(4) After October 12, 2019, a Department representative reviewed claimant's weekly claim for week 41-19 and noticed that claimant again reported work searches with potential employers that were located outside of her labor market area of Yakima, Washington. The Department then issued decision # 92022 which concluded that claimant did not actively seek work within her labor market during the week of October 6 through October 12, 2019, and was ineligible for benefits for that reason.

CONCLUSIONS AND REASONS: Claimant was not available for work from October 6 through October 12, 2019, and was ineligible for benefits for that week. Claimant was overpaid \$648 in benefits for that week and is liable to have that amount deducted from any future benefits payable.

Eligibility for Benefits. 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). The Department's witness testified that although decision # 92022 concluded claimant was ineligible for benefits because she did not actively seek work during the week at issue, it should have concluded that claimant was ineligible because she was not available for work during that week. Audio Record at 25:45

to 26:00. Order No. 20-UI-142494 also concluded that claimant was ineligible for benefits for that week because she was not available for work. The record supports the order's conclusion. For an individual to be considered "available for work" for purposes of ORS 657.155(1)(c), they must be:

* * *

(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). Here, the Department has the burden to establish that claimant was not available for work during the week at issue. *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).

The Department showed, and claimant did not dispute, that claimant knew she was not capable of immediately accepting and reporting in person for work opportunities she sought during the week at issue. Claimant had admitted to a Department representative on October 9, 2019 that it would have taken her probably 30 to 45 days and \$10,000 in resources to report to work for distant work opportunities she had previously sought that were located substantial distances from her labor market. During week 41-19, claimant similarly sought work in Connecticut, Missouri, Illinois, Florida, Alaska, Virginia, and Washington, D.C., all of which were also located substantial distances from her labor market area. Although claimant may have believed that under some circumstances she would have been able to work online for those employers, the record did not show that such circumstances existed for the employers claimant contacted during the week at issue, and she had been advised by the Department that she was required to be capable of reporting in person for work opportunities she sought. More likely than not, claimant was not capable of accepting and reporting for the work opportunities she sought during week 41-19.

Moreover, the record shows that claimant was unwilling to seek suitable work within her designated labor market area. Even during the week the Department told claimant that she was required to seek work in the Yakima, Washington area, claimant continued to limit her availability by only seeking work that was located outside of that labor market. By essentially seeking only online work opportunities during the week at issue, more likely than not, claimant imposed a condition which substantially reduced her opportunities to return to work at the earliest possible time.

For these reasons, claimant was not available for work during the week at issue. Consequently, she was not eligible for benefits for the week including October 6 through October 12, 2019 (week 41-19).

DECISION: Orders No. 20-UI-142494 and 20-UI-142495 are affirmed.

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

DATE of Service: February 14, 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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