

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0043

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 7, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not actively seeking work from September 8, 2019 through September 14, 2019 (decision # 72352). Claimant filed a timely request for hearing. On October 31, 2019, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for November 13, 2019, at which time claimant failed to appear. On November 13, 2019, ALJ Janzen issued Order No. 19-UI-139652, dismissing claimant's hearing request for failing to appear and leaving decision # 72352 undisturbed. On November 26, 2019, claimant filed a request to reopen the hearing. On December 19, 2019, OAH mailed notice of a hearing scheduled for January 2, 2020. On January 2, 2020, ALJ M. Davis conducted a hearing, and on January 3, 2020 issued Order No. 20-UI-142038, allowing claimant's request to reopen and affirming decision # 72352. On January 15, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the portion of the order under review allowing claimant's request to reopen the November 13, 2019 hearing is **adopted**. The remainder of this decision addresses whether claimant was actively seeking work from September 8 through 14, 2019.

FINDINGS OF FACT: (1) Claimant worked for Teksystems as a project manager on a temporary contract assignment, which ended on August 30, 2019. Claimant thought he would be working for the employer again but did not have a new assignment as of August 30th.

(2) On September 5, 2019, claimant filed an initial claim for unemployment benefits. He reported to the Department that his work separation was due to a lack of work and there was no return to work date.

(3) On September 15, 2019, claimant filed a weekly claim for benefits for the week of September 8, 2019 to September 14, 2019 (week 37-19). Sometime during that week claimant had received an offer of a new temporary work assignment with Teksystems. When claimant filed his weekly claim, he reported to the Department that he was temporarily unemployed and had not performed any work seeking activities during that week. The Department paid claimant benefits for week 37-19.

(4) On September 18, 2019, the Department mailed claimant a work search request form asking him to document his work search activities for week 37-19. Claimant did not respond.

(5) On September 18, 2019, claimant started working for the employer on a new temporary assignment as a project manager.

(6) On September 20, 2019, the employer notified the Department that August 30, 2019 was claimant's last day at work, that claimant had been laid off when his temporary assignment had ended, and that claimant had no assurance that he would return to work for the employer at that time.

CONCLUSIONS AND REASONS: Claimant did not actively seek work during the week of September 8 through September 14, 2019 (week 37-19).

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." *Id.* 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 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).

The provision that excuses individuals who are temporarily unemployed from actively seeking work with other employers as a condition of being eligible for benefits only applies when the individual has a reasonable expectation that they will return to work in four or fewer weeks. In this case, prior to the week at issue, claimant had stopped working for his employer because his temporary assignment with that employer ended. When the temporary assignment ended, claimant did not have any reasonable expectation that he would be returning to work with the employer, let alone full time work or work that equaled or exceeded his weekly benefit amount. Given that claimant did not have any reasonable expectation of re-employment with the employer, claimant also did not expect his period of unemployment to last fewer than four weeks. Claimant therefore was required to actively seek work as a condition of being eligible to receive benefits during the week at issue; the fact that Teksystems had, by the time of the week at issue, re-hired claimant to work in a different assignment did not excuse him from seeking work as required under OAR 471-030-0036(5)(a).

During the week at issue, claimant did not perform any work seeking activities other than maintaining contact with Teksystems. Because claimant did not conduct five work seeking activities, he did not actively seek work and is ineligible for benefits for week 37-19.

DECISION: Order No. 20-UI-142038 is 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 ໄດ້ ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄໍາຕັດສິນນີ້.

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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