

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0046

Affirmed
Late Requests for Hearing Allowed
Ineligible and Overpaid

PROCEDURAL HISTORY: On July 9, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work during the benefit period of April 14, 2019 through May 11, 2019, which replaced a prior payment determination (decision # 153516). On July 29, 2019, decision # 153516 became final without claimant having filed a timely request for hearing. On November 12, 2019, the Department served notice of an administrative decision, based upon decision # 153516, concluding that claimant received \$2,024 in benefits which claimant was not entitled to for the benefit period of April 14, 2019 through May 11, 2019 (decision # 101000). On December 2, 2019, decision # 101000 became final without claimant having filed a timely request for hearing. On December 3, 2019, claimant filed a late request for hearing on decision # 153516 and decision # 101000. On December 18, 2019, the Office of Administrative Hearings mailed notice of a consolidated hearing scheduled for December 31, 2019 at 1:30 p.m. On December 31, 2019, ALJ Frank conducted a consolidated hearing, and on January 2, 2020, issued Order Nos. 20-UI-141964 and 20-UI-141960, concluding in each case that claimant's late requests for hearing were allowed, and affirming decisions # 153516 and # 101000 respectively. On January 20, 2019, claimant filed a timely application 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-141964 and 20-UI-141960. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2020-EAB-0046 and 2020-EAB-0045).

Claimant submitted a written argument. Claimant did not declare that she provided a copy of her argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). Therefore, EAB did not consider claimant's written argument with respect to Case No. 2019-UI-02599. EAB did consider claimant's written argument with respect to Case No. 2019-UI-02603, but only to the extent it was based

upon the record. Claimant's return-on-investment (driving distance vs. potential money earned) argument did not address the overpayment issue or claimant's labor market area. The fact that claimant acknowledged that Glide, Oregon was only forty-five miles away from her residence in her argument supports the decisions reached by the Department and the ALJ and had no effect on EAB's decision for the reasons listed below.

FINDINGS OF FACT: (1) Claimant filed an initial claim for unemployment benefits on December 27, 2018. A weekly benefit amount of \$506 was established. Claimant's labor market included Riddle, Canyonville, Myrtle Creek, Winston, Green, Glide, and Roseburg, Oregon.

(2) While collecting unemployment benefits, claimant supplemented her income by providing occasional caregiving services to a particular client through her employer, Rise Autism Services, LLC. On April 15, 2019, the employer offered claimant work with a different client. Claimant declined the work and reported to the employer that she did not need additional hours. On April 17, 2019 and April 26, 2019, the employer offered claimant additional work with different clients. Claimant declined the work, and reported to the employer on April 26th that she only wanted to focus on work with her original client. Claimant also only wanted to work within a 25-mile radius of her residence, and thought the jobs were too far away. One of the jobs that the employer offered claimant and that claimant declined was located in Glide, Oregon.

(3) On April 29, 2019, the employer reported to the Department that claimant was not working all available hours because she had turned down three work opportunities.

(4) During each week between April 14, 2019 through May 11, 2019 (weeks 16-19 through 19-19), claimant reported to the Department that she had conducted her required work search activities and also that she was willing and capable of accepting and reporting for full-time, part-time, and temporary work.

(5) On July 9, 2019, the Department issued decision # 153516, denying benefits to claimant because she was not available to work from April 14, 2019 through May 11, 2019 (weeks 16-19 through 19-19). Decision # 153516 informed claimant that she might have to repay the benefits received during the period at issue. Claimant never received decision # 153516 in her mail and first learned about the decision on December 3, 2019.

(6) On December 3, 2019, claimant received decision # 101000 concluding that claimant had been overpaid unemployment benefits due to decision # 153516. Claimant received decision # 101000 a day after the timely appeal period for it expired. On December 3, 2019, claimant filed a late request for hearing on decision # 153516 and decision # 101000.

CONCLUSIONS AND REASONS: Claimant's late requests for hearing are allowed. Claimant was not available for work during the weeks of April 14, 2019 through May 11, 2019 (weeks 16-19 through 19-19) and claimant was paid benefits which she was not entitled to for these weeks.

Late requests for hearing. Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the portion of the two orders under review concluding that good cause has been shown to extend the filing periods is **adopted**.

Available for work. To be eligible to receive benefits, unemployed individuals must be available for work during each week claimed. ORS 657.155(1)(c). An individual must meet certain minimum requirements to be considered “available for work” for purposes of ORS 657.155(1)(c). OAR 471-030-0036(3) (April 1, 2018). Among those requirements are that the individual be 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; capable of accepting and reporting for any suitable work opportunities within the labor market in which work is being sought; and not imposing conditions that limit the individual’s opportunities to return to work at the earliest possible time. *Id.*

In Order No. 20-UI-141964, the ALJ concluded that claimant was not available for work during all of the weeks at issue (weeks 16-19 through 19-19). Claimant reported to the Department that she was willing and capable of accepting and reporting for full-time, part-time, and temporary work during weeks 16-19 through 19-19. However, at the hearing claimant qualified her “availability” answer for those weeks by limiting her willingness to work to a 25-mile radius of her house, and specifically cited Roseburg, Oregon as the outer limit of her availability.

Claimant stated that one of the jobs the employer offered her was in South Eugene, Oregon, which is over 100-miles away from her house. Audio Recording at 28:18 to 28:24. Claimant reported being advised by her WorkSource center representative that she did not have to accept jobs more than 50-miles away from her residence. Audio Recording at 32:36 to 33:20. However, claimant did not cite driving distances as her reason for turning down job opportunities in Glide and South Eugene when she talked to her employer in April 2019. Claimant only cited a preference for working with her original client. At the hearing, claimant stated she accepted all work offered, which is not supported by the record.

The preponderance of the evidence shows that claimant turned down two job opportunities during the weeks at issue, with the Glide opportunity being within her market area. Claimant made it clear at the hearing that she was only available for work assignments that were within twenty-five miles of her residence, which means she was unavailable for work assignments in those areas of her labor market that were farther out. Therefore, claimant was not available for work during weeks 16-19, 17-19, 18-19 and 19-19, and is ineligible to receive benefits for those weeks.

Overpayment. ORS 657.310(1) provides that an individual who received benefits to which the individual was not entitled is liable to either repay the benefits or have the amount of the benefits deducted from any future benefits otherwise payable to the individual under ORS chapter 657. That provision applies if the benefits were received because the individual made or caused to be made a false statement or misrepresentation of a material fact, or failed to disclose a material fact, regardless of the individual’s knowledge or intent. *Id.*

Claimant received \$506 in weekly benefits for weeks 16-19 through 19-19, a total of \$2,024, because she misrepresented material facts. Specifically, she did not report to the Department when filing weekly claims for benefits that she had limited her availability to work based on mileage and that she had turned down work assignments in Glide and South Eugene that had been offered to her. The record shows claimant’s misrepresentations were based on her misunderstanding of her labor market area and her responsibility to report any work declined regardless of its location, and that the misrepresentations were not willful. Regardless of claimant’s knowledge or intent in making misrepresentations to the

Department, however, because she received benefits she was not entitled to receive based upon her misrepresentations about her availability for work, claimant is liable to repay the \$2,024 overpayment to the Department or have it deducted from any future otherwise payable to her.

Where the Department has already paid benefits, it has the burden to prove benefits should not have been paid. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976). For the reasons listed above, the Department has met its burden. Claimant was ineligible to receive benefits for weeks 16-19 through 19-19; and therefore, was overpaid \$2024 in benefits.

DECISION: Order Nos. 20-UI-141964 and 20-UI-141960 are affirmed.

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

DATE of Service: February 26, 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 desisyon.

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

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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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