

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0267

Affirmed
Ineligible Weeks 06-20 through 11-20

PROCEDURAL HISTORY: On February 20, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work during the weeks from February 2, 2020 through February 15, 2020 and was ineligible for benefits for those weeks and until the reason for the denial had ended (decision # 111551). Claimant filed a timely request for hearing. On March 19, 2020, ALJ Shoemake conducted a hearing, and on March 20, 2020, issued Order No. 20-UI-146681, modifying the Department's decision and concluding that claimant was not available for work and did not actively seek work during the weeks from February 2, 2020 through March 14, 2020. On March 27, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant's written argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented them from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) Since before 2017 through March 2020, claimant was a licensed electrician in Texas and a member in good standing of a closed electrical workers' union, Houston, Texas Local 716. In 2017, when electrical work in Texas became scarce, claimant sought and obtained work in Oregon, where he had since resided. While in Oregon, claimant obtained electrical work through both his Texas union and Oregon Local 280, which had an affiliation with Houston, Texas Local 716. However, claimant was required to obtain and maintain an Oregon provisional license to work as an electrician in Oregon. Claimant obtained the Oregon provisional license, but the license expired on January 30, 2020.

(2) On January 31, 2020, claimant filed an initial claim for unemployment insurance benefits. The Department determined that claimant's claim was monetarily valid with a weekly benefit amount of \$648. The Department also determined that claimant's Oregon labor market was Prineville, Redmond, and Bend. Claimant claimed, but did not receive, benefits for the weeks including February 2, 2020 through March 14, 2020 (weeks 06-20 through 11-20), the weeks at issue.

(3) After January 30, 2020 claimant attempted to renew his Oregon provisional license through testing. Although claimant tested twice, he had not passed the test during the weeks at issue, and therefore did not have a license to work as an electrician in Oregon during the weeks at issue.

(4) During the weeks at issue, claimant sought work as an electrician by maintaining contact with Houston, Texas Local 716. Claimant learned from his union that he was number 27 on the union's "out of work" list. Audio Record at 12:00 to 12:45. Had claimant been offered any work in Texas, to accept and begin work there, he would have had to drive, fly, or change his residence to Texas. However, claimant was "stuck" in Oregon because he "ha[d] no money to get home [to Texas]." Audio Record at 12:45 to 13:05.

CONCLUSIONS AND REASONS: Claimant did not actively seek work and was not available for work during the weeks at issue.

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). For purposes of ORS 657.155(1)(c), with few exceptions, an individual is "actively seeking work" when conducting 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)(a)(December 8, 2019). However, 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).

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). Where, as here, claimant was not paid benefits for the weeks claimed, claimant has the burden to establish that he was eligible for benefits for those weeks. *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 did not actively seek work during the weeks at issue.¹ While he was a member in good standing of his closed Texas union and maintained contact with that union to seek electrical work, more likely than not, he was not capable of accepting and reporting for full time, part time and temporary work opportunities in Texas or elsewhere if and when dispatched by that union. Claimant lived in Oregon during the weeks at issue. At hearing, claimant explained that he was “stuck” in Oregon because he “ha[d] no money to get home.” Accordingly, because claimant was not capable of reporting for work when dispatched by the union due to his financial situation, claimant did not actively seek work under OAR 471-030-0036(5)(c) by remaining in contact with his union in Texas.

Claimant was also not available for work during the weeks at issue. Claimant was not capable of accepting and reporting for electrical work in Oregon because his provisional license had lapsed and he could not legally perform electrical work in Oregon without a license. To the extent claimant remained affiliated with his union in Houston, Texas, more likely than not, claimant was not “capable of accepting and reporting for any suitable work opportunities within the labor market in which work was being sought” because he “ha[d] no money to get home [to Texas].” OAR 471-030-0036(3)(b). To accept such work, he would have had to first drive, fly, or move his residence to Texas, and that delay in his ability to accept and report for work there would more likely than not have substantially limited his opportunities “to return to work at the earliest possible time.” OAR 471-030-0036(3)(c).

Claimant did not actively seek work and was not available for work during the weeks at issue and is ineligible for benefits for those weeks.

DECISION: Order No. 20-UI-146681 is affirmed.

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

DATE of Service: April 28, 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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¹ Order No. 20-UI-146681 concluded that claimant did not actively seek work during the weeks at issue because he did not seek work he could perform within his Oregon labor market area due to the lapse of his provisional license. Order No. 20-UI-146681 at 5. However, there is no requirement that an individual seek work within their assigned labor market area to be “actively seeking work.” OAR 471-030-0036(7) specifically provides, “Nothing in this rule shall prohibit an individual who is a citizen, permanent legal resident, or otherwise legally authorized to work in the United States from seeking work in other labor market areas in any state or country.”



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

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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