

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0270

Reversed & Remanded

PROCEDURAL HISTORY: On January 24, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from December 15, 2019 through January 11, 2020 (decision # 61751). Claimant filed a timely request for hearing. On March 11, 2020, ALJ Jarry conducted a hearing and issued Order No. 20-UI-146019, affirming the Department's decision. On March 31, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On March 1, 2019, claimant filed an initial claim for unemployment insurance benefits. He subsequently resumed working and stopped claiming benefits.

(2) On December 6, 2019, claimant's regular employer laid him off work because there had been a snowstorm which had made "access to the unit" impossible, and it was necessary to wait for the snow to melt. Audio Record at 18:40 to 19:20. At the time the employer laid off claimant, the employer told claimant that he would return to work "as soon as possible" and claimant understood that "it was going to be within the four weeks". Audio Record at 18:40 to 19:20.

(3) On December 23, 2019, claimant restarted his claim for benefits. The restarted claim was effective December 15, 2019. Claimant then filed weekly claims for benefits for the weeks of December 15, 2019, through January 11, 2020 (weeks 51-19 through 02-20), the weeks at issue.

(4) When claimant restarted his claim, he reported to the Department that his last day of work with his employer had been December 6, 2019, and he expected to return to work on January 22, 2020. Claimant further reported that for the week of December 15, 2019 through December 21, 2019 (week 51-19), he had been temporarily laid off and that he had conducted zero work searches.

(5) On December 24, 2019, the Department sent claimant a letter requesting information about claimant's work search activities during weeks 51-19 through 52-19. Claimant received the letter but did not respond to it.

(6) On December 29, 2019, claimant submitted his weekly claim for benefits for the week of December 22, 2019 through December 28, 2019 (week 52-19), and reported that he had been temporarily laid off and that he had conducted zero work searches.

(7) On January 5, 2020, claimant submitted his weekly claim for benefits for the week of December 29, 2019 through January 4, 2020 (week 01-20), and reported that he had been temporarily laid off and that he had conducted zero work searches.

(8) On January 6, 2020, claimant had two separate conversations with representatives from the Department. In both conversations claimant indicated that his return to work date had changed to the week of January 12, 2020 to January 18, 2020 (week 03-20) and that he had maintained weekly contact with the employer.

(9) On January 12, 2020, claimant submitted his weekly claim for benefits for the week of January 5, 2020 through January 11, 2020 (week 02-20), and reported that he was temporarily laid off and that he had conducted zero work searches.

(10) On January 13, 2020, claimant returned to work for the employer. Claimant made contact with his employer every day between December 15, 2019 and January 11, 2020.

CONCLUSIONS AND REASONS: The order under review is reversed, and the matter remanded.

To be eligible to receive benefits, unemployed individuals must actively seek work during each week claimed. ORS 657.155(1)(c); OAR 471-030-0036(5) (December 8, 2019). For individuals who are temporarily unemployed, OAR 471-030-0036(5)(b) defines “actively seeking work” as follows:

(A) They are considered to be actively seeking work when they remain in contact with their regular employer and are capable of accepting and reporting for any suitable work with that employer;

(B) There is a reasonable expectation that they will be returning to work for their regular employer. The work the individual is returning to must be full time or pay an amount that equals or exceeds their weekly benefit amount;

(C) The department will not consider the individual to be temporarily unemployed if they were separated from their employer for reasons other than a lack of work, the work the individual is returning to is not with their most recent employer, or the length the individual is unemployed is longer than the period described in subsection (D) of this section; and

(D) The department will consider that the period for which an individual is temporarily unemployed:

(i) Begins the last date the individual performed services for the employer. In the case of an individual still working for the employer, it is the last date worked

during the week in which the individual had earnings less than their weekly benefit amount; and

(ii) Cannot be greater than four weeks between the week the individual became temporarily unemployed and the week the individual returns to work as described in subsection (B) of this section.

The order under review concluded that claimant was not “temporarily unemployed” for purposes of OAR 471-030-0036(5)(b) because on the December 6, 2019 date that his employer laid claimant off, the employer had not provided claimant a return to work date, and claimant ultimately returned to work on January 13, 2020, which was more than four weeks after his December 6, 2019 layoff date. Because claimant did not qualify for the “temporarily unemployed” exception, the order concluded that claimant was required to conduct the five work seeking activities per week required by OAR 471-030-0036(5)(a), which claimant did not do. Based on this reasoning, the order concluded that claimant was not actively seeking work during the weeks at issue.

Order No. 20-UI-146019 has misapplied the relevant standard for “temporarily unemployed,” and the record demonstrates that there was insufficient inquiry at the hearing to determine whether claimant was “temporarily unemployed” when the relevant standard is correctly applied. To establish eligibility for benefits under OAR 471-030-0036(5)(b), an individual need not show with certainty that they will return to work within four weeks of the date they last performed services. They only need show that they expected to return to work within that time, and that the expectation was reasonable. The record, as currently constituted, requires further development in these latter two areas.

On remand, inquiry should focus on the events surrounding the December 6, 2019, date that claimant was laid off from employment. Specific inquiry should examine what the employer had in mind, in terms of a timeline, when they told the claimant he would return to work “as soon as possible.” Assuming the employer believed claimant would return to work within four weeks, further inquiry must address whether such a view was reasonable. In this regard, inquiry should be directed into whether claimant’s return to work depended on the occurrence of any additional conditions, other than the snow melting. With regard to the snow melting, the reasonableness inquiry should consider factors that make it more or less likely that the snow would have melted within the four week timeline.

Likewise, further inquiry should be directed into claimant’s apparent view that he would be returning to work “within the four weeks.” Relevant inquiry should include why claimant believed he would be returning to work within four weeks and/or what factors suggested to him that his layoff would be that short. Similarly, in the event it is concluded that claimant did reasonably believe, as of December 6, 2019, that he would return to work within four weeks, inquiry should further develop the time period, within which claimant became aware that he would not return to work within the four week time period. The answer to this latter question directly impacts when, or if, claimant should have begun performing the five work seeking activities requirement found in OAR 471-030-0036(5)(a) during any of the remaining weeks.

The intent of this decision is not to constrain the inquiry on remand. In addition to the suggested lines of inquiry, any additional inquiry that is relevant to the question of claimant’s expectation regarding when he would return to work, and whether that expectation was reasonable, should also be made. On remand,

the parties should be allowed to provide any additional relevant and material information or testimony about the issues discussed, and to cross-examine each other as necessary.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary for a determination of whether claimant was temporarily unemployed during the weeks at issue, Order No. 20-UI-146019 is reversed, and this matter is remanded.

DECISION: Order No. 20-UI-146019 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: May 5, 2020

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 20-UI-146019 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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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

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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