

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0480

Reversed
Eligible Weeks 09-20 through 11-20

PROCEDURAL HISTORY: On March 6, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work and was not eligible to receive unemployment insurance benefits from February 23, 2020 through February 29, 2020 and until the reason for the denial ended (decision # 114923). Claimant filed a timely request for hearing. On April 29, 2020, ALJ Shoemake conducted a hearing, and on May 6, 2020, issued Order No. 20-UI-149321, modifying the Department's decision and concluding claimant was not available for work and was not eligible to receive benefits from February 23, 2020 through March 14, 2020. On May 12, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB did not consider claimant's written argument written on her application for review because it pertained to a different case.

FINDINGS OF FACT: (1) On May 14, 2019, claimant filed an initial claim for unemployment insurance benefits.

(2) Claimant claimed, and the Department denied, benefits for the weeks from February 23, 2020 through March 14, 2020 (weeks 09-20 through 11-20). These are the weeks at issue.

(3) Claimant attended community college full time from 2019 until March 14, 2020. Her classes were Monday through Thursday, from 10:00 a.m. to 1:00 p.m. Until her employment ended on February 10, 2020, claimant had also worked full time while she attended school. Claimant told her employer that she was taking classes. When her work hours conflicted with her classes, claimant worked and did not attend class.

(4) During the weeks at issue, claimant was seeking work as a sales associate and a deli clerk. Claimant's labor market area was Medford, Oregon and the surrounding area. Sales associate work was customarily performed Monday through Saturday, day shift, in claimant's labor market. Deli clerk work was customarily performed all days, day and evening shifts, in claimant's labor market.

(5) During the weeks at issue, claimant continued attending school and her class schedule remained the same. Claimant was willing to accept full time, part time and temporary work. If offered work that conflicted with her class schedule during the weeks at issue, claimant would have worked and missed her classes.

CONCLUSIONS AND REASONS: Claimant was available for work during the weeks from February 23, 2020 through March 14, 2020.

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 an individual to be considered “available for work” for purposes of ORS 657.155(1)(c), they must be:

(a) 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, * * *;
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). Claimant had the burden to establish that she was available for work during the weeks 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; 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).

Order No. 20-UI-149321 concluded that claimant was not available for work during the weeks at issue.¹ The order reasoned that claimant was not available for work because, if offered work that conflicted with her classes, she would tell the employer about her classes, and in doing so, impose a condition that substantially reduced her opportunities to return to work at the earliest possible time.² The record does not support the order’s conclusion and reasoning.

Claimant’s unrefuted testimony was that if she were offered full time, part time or temporary work that conflicted with her class schedule during the weeks at issue, she would have worked rather than attend class. Audio Record at 23:46 to 23:57. Claimant’s testimony was persuasive because her additional uncontested testimony was that during her employment that ended on February 10, 2020, when her work schedule conflicted with her class schedule, claimant “would always work” and did not attend class. Audio Record at 19:04 to 19:42; 21:33 to 21:44. There was no evidence that claimant refused work due to school. Nor does telling one’s employer that you attend school necessarily impose a condition on one’s availability to work. To the extent there might have been a conflict between a class and an offer of

¹ Order No. 20-UI-149321 at 2-3.

² Order No. 20-UI-149321 at 2-3.

work, claimant's prior practice of choosing work instead of school showed she would more likely than not have accepted the work. Claimant's class schedule did not impose a condition that substantially reduced her opportunities to return to work at the earliest possible time.

Claimant has met her burden of demonstrating that she was, more likely than not, available for work during the weeks at issue and she was, therefore, eligible to receive benefits for those weeks if otherwise eligible.

DECISION: Order No. 20-UI-149321 is set aside, as outlined above.

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

DATE of Service: June 25, 2020

NOTE: This decision reverses an order that denied benefits. Please note that payment of benefits, if any are owed, may take approximately a week for the Department to complete.

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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



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 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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