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State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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JR 005.00
AAA 005.00

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0694

Order No. 20-UI-155458 Reversed – No Disqualification
Orden No. 20-UI-155458 Revocada – No Descalificación

Order No. 20-UI-155451 Reversed – Eligible Weeks 13-20 Through 40-20
Orden No. 20-UI-155451 Revocada – Elegible Desde la Semana 13-20 Hasta la Semana 40-20

PROCEDURAL HISTORY: On September 14, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant failed without good cause to accept suitable work when offered on June 22, 2020 and was disqualified from receiving unemployment insurance benefits for that reason (decision # 130851). Also on September 14, 2020, the Department served notice of an administrative decision concluding claimant was not available for work or eligible to receive benefits for the weeks from March 22, 2020 through September 5, 2020 and until the reason for the denial had ended (decision # 111720). Claimant filed timely requests for hearing on decisions # 130851 and # 111720.

On October 12, 2020, ALJ Wyatt conducted an interpreted hearing on decision # 130851, and on October 20, 2020, issued Order No. 20-UI-155458 affirming decision # 130851 and further concluding claimant was disqualified from receiving benefits effective June 21, 2020 and until claimant requalified under Employment Department law. On October 12, 2020, ALJ Wyatt conducted a separate interpreted hearing on decision # 111720, and on October 20, 2020, issued Order No. 20-UI-155451 modifying decision # 111720 by concluding claimant was not available for work or eligible to receive benefits for the weeks from March 22, 2020 through October 3, 2020. On October 28, 2020 claimant filed applications for review of Orders No. 20-UI-155458 and 20-UI-155451 with the Employment Appeals Board (EAB).

HISTORIA PROCESAL: *El 14 de septiembre de 2020, el Departamento de Empleo de Oregón (el Departamento) envió notificación de una decisión administrativa concluyendo que el reclamante no aceptó trabajo adecuado sin buena causa cuando se le ofreció el 22 de junio de 2020 y fue descalificado de recibir beneficios de seguro de desempleo por esa razón (decisión # 130851). También el 14 de septiembre de 2020, el Departamento envió notificación de una decisión administrativa concluyendo que el reclamante no estaba disponible para trabajar ni era elegible para recibir beneficios de desempleo desde el 22 de marzo de 2020 hasta el 5 de septiembre de 2020 (decisión # 111720) y hasta*

que la razón de la denegación había terminado. El reclamante sometió unas aplicaciones oportunas para audiencias sobre decisiones # 130851 y # 111720.

El 12 de octubre de 2020, el juez administrativo Wyatt llevó a cabo una audiencia que fue interpretada al español sobre la decisión # 130851, y el 20 de octubre de 2020, emitió la Orden No. 20-UI-155458, confirmando la decisión # 130851 y concluyendo que el reclamante fue descalificado de recibir beneficios de seguro de desempleo desde el 21 de junio de 2020 y hasta que el reclamante recalificó bajo la ley del Departamento de Empleo. El 12 de octubre de 2020, el juez administrativo Wyatt llevó a cabo otra audiencia que fue interpretada al español sobre la decisión # 111720, y el 20 de octubre de 2020, emitió la Orden No. 20-UI-155451, modificando decisión # 111720 y concluyendo que el reclamante no era elegible para recibir beneficios de desempleo desde el 22 de marzo de 2020 hasta el 3 de octubre de 2020. El 28 de octubre de 2020, el reclamante presentó una aplicación para revisión de las Ordenes Judiciales No. 20-UI-155458 y 20-UI-155451 a La Junta de Apelaciones de Empleo (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 20-UI-155458 and 20-UI-155451. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2020-EAB-0693 and 2020-EAB-0694, respectively).

With their application for review, claimant offered additional information for EAB's consideration. However, claimant did not declare that they provided a copy of that information to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The information offered also was not part of the consolidated hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented them from offering the information during the hearings as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearings when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) J.A. Bailie LLC, dba Champions Sports Bar and Grill, employed claimant as a cook during calendar year 2020, prior to March 17, 2020. Claimant's work hours were Monday through Friday, 9:00 a.m. through 3:00 p.m.

(2) Claimant lived with his adult son, a single parent, and eight year-old grandson, who suffered from "ADHD." Transcript at 13 (2020-UI-11965 10:45 a.m. hearing). Claimant's adult son worked on Saturdays and Sundays, on which days claimant was the sole caregiver for his eight year-old grandson. The child's mother was "out of the picture." Transcript at 13 (2020-UI-11965 10:45 a.m. hearing). Claimant also home schooled claimant's grandson on those days.

(3) On March 8, 2020, Oregon Governor Kate Brown declared a statewide emergency under ORS 401.165 et seq. due to the public health threat posed by the novel infectious coronavirus (COVID-19). Executive Order 20-03 (effective March 8, 2020). Following that declaration, on March 17, 2020, Governor Brown issued Executive Order No. 20-07 directing and ordering that restaurants, bars, taverns, brew pubs, or other similar establishments that offer food or drink may not offer or allow on-premises consumption of food or drink. Executive Order 20-07 (effective March 17, 2020).

(4) On March 17, 2020, the employer "laid off" claimant from work based on the governor's executive order. Transcript at 6 (2020-UI-11965 10:45 a.m. hearing).

(5) Claimant claimed benefits for the weeks from March 22, 2020 through October 3, 2020 (weeks 13-20 through 40-20). These are the weeks at issue. Prior to the pandemic, in claimant's labor market, work as a cook typically was performed weekdays and weekends, day and evening shifts. Claimant was not willing to work on weekends during the weeks at issue because, due to the COVID-19 pandemic, he and his adult son had not been able to obtain the services of a caregiver to watch his eight year-old grandson with special needs while the child's father was at work, making claimant the only childcare option on weekends. Claimant was willing to work all hours on Monday through Friday.

(6) On or about June 22, 2020, Oregon relaxed its COVID-19 restrictions concerning restaurants and bars, and on that date, the employer offered claimant work in his prior position as cook at the same restaurant and rate of pay at which he had previously worked, beginning June 26, 2020. However, the work hours the employer offered claimant was Friday through Sunday, 9:00 a.m. through 3:00 p.m. Claimant explained that he was the sole caregiver for his grandson on Saturdays and Sundays and declined the employer's offer of work for that reason. Claimant had been unable to obtain childcare for claimant's grandson because of the absence of caregivers willing to care for claimant's special needs grandchild during the COVID-19 pandemic. Transcript at 12 (2020-UI-11968 9:30 a.m. hearing). When claimant declined the work offered, he offered to work any hours Monday through Friday, but the employer did not have such work available for claimant.

CONCLUSIONS AND REASONS: Claimant refused the employer's June 22, 2020 offer of work with good cause and therefore is not disqualified from receiving benefits because of that job refusal. Claimant was not unavailable for work during the weeks from March 22 through October 3, 2020 and, for that reason, is not ineligible for benefits for those weeks.

Job Refusal. ORS 657.176(2)(e) requires a disqualification from unemployment insurance benefits if an individual failed without good cause to accept suitable work when offered. In a job refusal case, the burden of proof is on claimant to establish that a valid offer of work made by an employer was not suitable, or that claimant had good cause to refuse the offer. *Vail v. Employment Department*, 30 Or App 365, 567 P2d 129 (1977). However, the employer must first establish that they made claimant a *bona fide* offer of suitable work and that claimant refused it, thus making a *prima facie* showing that claimant was not entitled to benefits. Only if the employer meets that burden does the burden then shift to claimant to show the offer of work was not suitable, or show claimant had good cause for refusing it. OAR 471-030-0038(6)(a) (September 22, 2020) defines "good cause" as "such that a reasonable and prudent person, exercising ordinary common sense, would refuse to * * * accept suitable work when offered by the employer."

Order No. 20-UI-155458 concluded that the work offered by the employer was suitable and that by declining that work offer, claimant did so without good cause. The order reasoned,

> Despite claimant's understandable reason for declining the work that would have begun on June 26, 2020, declining work due to schedule restrictions imposed by the claimant does not constitute good cause for failing to accept suitable work under Employment Department law.

Order No. 20-UI-155458 at 2-3. Although the record supports the order's conclusion that the work offered was suitable for claimant because the offer included the same terms as claimant's previous

employment, it does not support the order's conclusion that claimant's refusal of that offer of work was without good cause.

Claimant refused the employer's offer to work a weekend shift because during the COVID-19 pandemic he and his adult son had not been able to obtain the services of a caregiver to watch his eight year-old grandson with special needs while the child's father was at work. Claimant's adult son had to work on weekends, could not provide care for his son while he worked, and the child's mother was "out of the picture." The eight year-old child suffered from ADHD and with no one willing to provide childcare for him, claimant declined the weekend shift so that he could provide the necessary childcare. On this record, viewed objectively, a reasonable and prudent person, exercising ordinary common sense in claimant's circumstances, would have refused to accept weekend shift offered by the employer in order to care for the child.

Claimant therefore refused the employer's June 22, 2020 offer of work with good cause and is not disqualified from receiving unemployment insurance benefits because of that job refusal.

Available for Work. To be eligible to receive benefits, unemployed individuals must be available for work during each week claimed as defined by OAR 471-030-0036(3) (August 2, 2020 through December 26, 2020); ORS 657.155(1)(c). Generally, for an individual to be considered "available for work" for purposes of ORS 657.155(1)(c), they must be:

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> (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, unless such part time or temporary opportunities would substantially interfere with return to the individual's regular employment; and
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> (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
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> (c) Not imposing conditions which substantially reduce the individual's opportunities to return to work at the earliest possible time; and
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> * * *

However, Oregon temporary rules set out unemployment insurance provisions applicable to the unique situations arising due to COVID-19 and the actions to slow its spread. OAR 471-030-0070(5) (effective March 8, 2020 through September 12, 2020)[1] provides, in relevant part, that a person will not be deemed unavailable for work because:

[1] Although this administrative rule was effective between March 8, 2020 and September 12, 2020, a subsequent rule, effective September 13, 2020 and thereafter, was enacted that also included subsection (5)(b) retroactively. See OAR 471-030-0071 (October 25, 2020). https://www.oregon.gov/employ/Documents/Temporary%20Rule-2.pdf [hereinafter OED Temporary COVID-19 Rule]. Although claimant did not have legal custody of his grandchild, in effect, he was his guardian on weekends. OAR 471-030-0070(5), an Oregon temporary rule enacted due to the unique situations arising due to COVID-

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> (b) They are home solely because they lack childcare for a child or children due to school or daycare closures or curtailments;
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Order No. 20-UI-155451 concluded claimant was not available for work during the weeks at issue, reasoning that claimant

> "was not willing to work weekends primarily because he cares for his eight year old grandson on weekends. Although claimant's reason for not being available to work on weekends is clearly important, he did impose a condition that substantially reduced his opportunities to return to work at the earliest possible time."

Order No. 20-UI-155451 at 2-3. However, the order under review did not consider the applicability of OAR 471-030-0070(5)(b).

The record shows that claimant was unable to work on weekends because, due to the COVID-19 pandemic, he and his adult son had not been able to obtain the services of a caregiver to watch his eight year-old grandson with special needs while the child's father was at work, making claimant the only childcare option. Transcript at 12-14 (2020-UI-11968 9:30 a.m. hearing). The record also shows that claimant would have returned to work for the employer if any shift other than a weekend shift had been made available to him. Transcript at 13-14 (2020-UI-11968 9:30 a.m. hearing). The record therefore establishes that claimant was home on weekends "solely" because of the COVID-related lack of available childcare for his special needs grandchild, making claimant not unavailable for work during the weeks at issue under OAR 471-030-0070(5)(b).

In sum, claimant refused the employer's June 22, 2020 offer of work with good cause and is not disqualified from receiving unemployment insurance benefits because of that job refusal. Claimant was not unavailable for work during the weeks of March 22 through October 3, 2020, and, for that reason, is not ineligible for benefits for those weeks.

DECISION: Orders No. 20-UI-155458 and 20-UI-155451 are set aside, as outlined above. *La Orden de la Audiencia 20-UI-155451 se deja a un lado, de acuerdo a lo indicado arriba.*

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

19, did not define the term "child" for the purposes of the rule. Moreover, during a state of emergency declared by the Governor under ORS 401.165, the Department may waive, otherwise limit, or modify the requirements of OAR 471-030-0036. OAR 471-030-0071 (September 13, 2020).

DATE of Service: December 4, 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.

***NOTA**: Usted puede apelar esta decisión presentando una solicitud de revisión judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) dentro de los 30 días siguientes a la fecha de notificación indicada arriba. Vea ORS 657.282. Para obtener formularios e información, puede escribir a la Corte de Apelaciones de Oregon, Sección de Registros (Oregon Court of Appeals/Records Section), 1163 State Street, Salem, Oregon 97310 o visite el sitio web en courts.oregon.gov. En este sitio web, hay información disponible en español.*

***Por favor, ayúdenos mejorar nuestros servicios completando un formulario de encuesta sobre nuestro servicio de atención al cliente.** Para llenar este formulario, puede visitar* https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey. *Puede acceder a la encuesta usando una computadora, tableta, o teléfono inteligente. Si no puede llenar el formulario sobre el internet, puede comunicarse con nuestra oficina para una copia impresa de la encuesta.*

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 – 本判决会影响您的失业救济金。 如果您不明白本判决， 请立即联系就业上诉委员会。 如果您不同意此判决，您可以按照该判决结尾所写的说明，向俄勒冈州上诉法院提出司法复审申请。

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 فورا، و إذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للمراجعة القانونية بمحكمة الإستئناف 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 دستورالعمل 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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