

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0698

Affirmed
Ineligible

PROCEDURAL HISTORY: On September 30, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work beginning March 8, 2020 because he was absent from his labor market, and was therefore not eligible to receive unemployment insurance benefits from March 8, 2020 through September 26, 2020 and until the reason for the denial had ended (decision # 110554). Claimant filed a timely request for hearing. On October 20, 2020, ALJ Wyatt conducted a hearing, and on October 28, 2020 issued Order No. 20-UI-155819, modifying the Department's decision, concluding that claimant was not available for work from March 8, 2020 through October 10, 2020 (weeks 11-20 through 41-20) and therefore not eligible to receive benefits for that period. On November 5, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant's 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 him from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered claimant's argument to the extent it was based on the hearing record but did not consider any new information not received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Claimant's permanent residence from March 2020 through October 2020 was Portland, Oregon.

(2) On January 19, 2020, claimant traveled to Morocco to visit family for four or five weeks. Thereafter, claimant wanted to leave Morocco and return to the United States but was unable to do so because of international travel restrictions. During the period of March 8, 2020 through October 10, 2020, claimant was in Morocco.

(3) Claimant claimed unemployment insurance benefits for the weeks of March 8, 2020 through October 10, 2020.

CONCLUSIONS AND REASONS: Claimant was not available for work during the weeks of March 8, 2020 through October 10, 2020 (weeks 11-20 through 41-20).

To be eligible to receive unemployment insurance benefits, unemployed individuals must be able to work, available for work, and actively seek work during each week claimed. ORS 657.155(1)(c). An individual is not considered “available for work” in any week in which the individual spent the major portion of the week outside of the United States¹ unless the individual spent the major portion of the week: (1) in Canada and was authorized to work in Canada, or (2) in a country included in the Compact of Free Association with the United States of America. OAR 471-030-0036(3)(h)(C)-(E) (August 2, 2020 through December 26, 2020).

It is undisputed that during the weeks of March 8, 2020 through October 10, 2020, claimant was in Morocco, which is outside of the United States. Morocco is not Canada; nor is it a country included in the Compact of Free Association with the United States of America.² Because claimant spent the weeks of March 8, 2020 through October 10, 2020 outside of the United States in Morocco, he was not available for work during those weeks pursuant to OAR 471-030-0036(3)(h)(C)-(E).

Due to unique situations arising under COVID-19, there are temporary unemployment insurance provisions that, if applicable, can modify the above “available for work” analysis. Because the time period at issue here is the weeks of March 8, 2020 through October 10, 2020, there are two such provisions to consider: (1) temporary rule OAR 471-030-0070(5)(a) (effective March 8, 2020 through September 12, 2020) and, (2) paragraph (5)(a) of Oregon Employment Department Temporary Rule for Unemployment Insurance Flexibility, <https://www.oregon.gov/employ/Documents/Temporary%20Rule-2.pdf> (effective beginning September 13, 2020). The provisions are identical and provide as follows:

Available for work – ORS 657.155(1)(c) and federal law require a person to be available for work in order to receive unemployment insurance benefits. A person will not be deemed unavailable for work because:

(a) They are staying in their home, or are quarantined, due to risk of exposure to, or spread of, the novel coronavirus at the advice of a health care provider or by advice issued by public health officials or by directive of a government official, even if their employer had work for them they could otherwise have performed[.]

These temporary COVID-19 “available for work” provisions do not apply to claimant’s situation. By their terms, the provisions apply only to ORS 657.155(1)(c) and not ORS 657.155(2). Here, claimant

¹ “Outside of the United States” means outside of the United States, District of Columbia or any territory or political division that is directly overseen by the United States federal government. OAR 471-030-0036(3)(h)(E). An individual who is the spouse or domestic partner of an individual stationed at a military base or embassy located outside of the United States is considered available for work so long as job opportunities exist on the military base or embassy, the individual lives within a reasonable commuting distance of the job opportunities, and the individual is willing to accept the terms and conditions of the available employment. OAR 471-030-0036(3)(h)(E)(i)-(iv). This provision does not apply to claimant because he was present in Morocco due to a family visit and subsequent travel restrictions, not because he was the spouse or domestic partner of an individual stationed at a military base or embassy.

² The countries included in the Compact of Free Association with the United States of America are the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. See 48 U.S.C. §§ 1901-1973.

was not available for work during the weeks of March 8, 2020 through October 10, 2020 by operation of ORS 657.155(2).

Under ORS 657.155(2)(a) and (b), “[a]n individual who leaves the individual’s normal labor market area for the major portion of any week is presumed to be unavailable for work” unless the individual “[h]as conducted a bona fide search for work” and “has been reasonably accessible to suitable work in the labor market area in which the individual spent the major portion of the week” or unless the individual “was required to be outside the individual’s normal labor market area to apply for suitable employment within the individual’s normal labor market.”

The record shows that in January 2020, claimant left Portland, his normal labor market, and was gone from Portland during the weeks of March 8, 2020 through October 10, 2020. There is no evidence in the record that claimant conducted a search for work or was accessible to suitable work while in Morocco. Moreover, claimant left Portland to visit family, not because he was required to be in Morocco to apply for suitable employment within Portland. For these reasons, ORS 657.155(2) applies to this case. Because claimant was not available for work during the time period at issue by operation of ORS 657.155(2), the temporary COVID-19 “available for work” provisions – which apply only to the availability under ORS 657.155(1)(c) – are not implicated.

The temporary COVID-19 “available for work” provisions also do not apply based on the facts of this case. Here, claimant stated that he lived in Portland but traveled to Morocco in January 2020 to see his family for four or five weeks. Audio Recording at 3:29 to 4:03, 13:03 to 13:33. Thereafter, claimant was unable to return to the United States because of travel restrictions. Audio Recording at 13:34 to 13:53. Claimant wanted to return to the United States “as soon as possible.” Audio Recording at 14:05 to 14:27. But his travel route – from eastern Morocco to Casablanca, then to France – was blocked. Audio Recording at 12:29 to 12:52. The record thus shows that, during the weeks of March 8, 2020 through October 10, 2020, international travel restrictions prevented claimant from leaving Morocco. But it takes more than international travel restrictions to implicate the temporary COVID-19 “available for work” provisions quoted above. For those provisions to apply, claimant must be staying in his home or quarantined. While it is fair to infer that claimant’s ability to travel to Casablanca and then to France was restricted as a measure to address COVID-19, the record does not show that such travel restrictions constituted an order requiring claimant to quarantine or stay in his home in Portland.

Claimant was not available for work during the weeks of March 8, 2020 through October 10, 2020 (weeks 11-20 through 41-20) and therefore was ineligible for unemployment insurance benefits for those weeks.

DECISION: Order No. 20-UI-155819 is affirmed.

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

DATE of Service: December 11, 2020

NOTE: This decision denies payment of your Unemployment Insurance (UI) benefits.

However, you may be eligible for Pandemic Unemployment Assistance (PUA) benefits for the period you are not eligible for other benefits as long as you are unable to work, unavailable for work, or unemployed due to the COVID-19 public health emergency. PUA is a new unemployment benefits program available through the Oregon Employment Department in response to the COVID-19 pandemic.

Visit <https://unemployment.oregon.gov> for more information, to apply for PUA, or to contact the Oregon Employment Department using the “Contact Us” form. You can also apply for PUA by calling 1-833-410-1004, but please be aware that the PUA staff cannot answer questions about this decision that denies payment of regular Unemployment Insurance (UI) benefits.

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.surveymzmo.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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.