

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0804

Affirmed
Ineligible ~ Weeks 24-20 through 41-20

PROCEDURAL HISTORY: On November 4, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not able to work and was not available for work during the weeks from June 7, 2020 through October 10, 2020, and was ineligible for unemployment insurance benefits for those weeks and until the reason for the denial had ended (decision # 71248). Claimant filed a timely request for hearing. On December 8, 2020, ALJ Hoppe conducted a hearing, and on December 9, 2020 issued Order No. 20-UI-157456, affirming decision # 71248. On December 28, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: 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 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) On April 28, 2020, claimant filed an initial claim for unemployment insurance benefits. Claimant claimed benefits for each of the weeks including June 7, 2020 through October 10, 2020 (weeks 24-20 through 41-20), the weeks at issue.

(2) During the weeks at issue, a grocery store employed claimant. Claimant was a retail clerk in the home department of the grocery store. Claimant's job duties entailed assisting shoppers and performing customer service. Claimant did not work during the weeks at issue, however, because he was on leave.

(3) Claimant was on two different types of leave during the weeks at issue. From a point in time before June 7, 2020 until June 26, 2020, claimant was suspended from work subject to an investigation of potential misconduct. From June 26, 2020 until approximately October 13, 2020, claimant was on Family and Medical Leave Act (FMLA) leave. Claimant took FMLA leave because he was incapacitated due to anxiety and related psychological issues. Claimant also took FMLA leave because it

ensured that he and his family would continue to have employer-provided health insurance coverage while claimant was on FMLA leave.

(4) On June 9, 2020, claimant's wife had hip replacement surgery. Claimant cared for his wife following the surgery. No one else was available to care for claimant's wife. Claimant's wife required 24-hour care and claimant provided virtually all of her care. The leave claimant was on during the weeks at issue allowed claimant the free time to care for his wife while she was recovering from surgery.

(5) On or about October 13, 2020, claimant's wife completed her recovery. Claimant returned to work on October 13, 2020.

CONCLUSIONS AND REASONS: Claimant was not available for work during each of the weeks including June 7, 2020 through October 10, 2020 (weeks 24-20 through 41-20), and is not eligible to receive benefits for those weeks.¹

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:

* * *

(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[.]

* * *

OAR 471-030-0036(3) (August 2, 2020 through December 26, 2020).

The record shows that claimant was not available for work during the weeks at issue. From June 9, 2020 until October 13, 2020 claimant cared for his wife following her hip replacement surgery. Claimant's wife required 24-hour care and claimant provided virtually all of her care. The care claimant provided for his wife placed demands on his time that rendered him incapable of accepting and reporting for suitable work opportunities during the weeks at issue. Although claimant asserted at hearing that he was available to work remotely during the weeks at issue, claimant's primary occupation was as a retail clerk at a grocery store and the record fails to show how claimant could perform such work on a remote basis. Even if performing retail clerk work on a remote basis had been possible, claimant did not offer evidence as to how he could have performed remote work of any kind while he was at the same time providing 24-hour care for his wife. Viewing the record as a whole, there is no basis to conclude that claimant was capable of accepting and reporting for remote work during the weeks as issue.

¹ Although Order No. 20-UI-157456 concluded that claimant was not available for work *and* was not able to work or actively seeking work during the weeks at issue, consideration of whether claimant was able to work or actively seeking work during those weeks is unnecessary given that this decision has concluded that claimant was not available for work during those weeks. Accordingly, this decision will not address those issues.

Claimant was not capable of accepting and reporting for any suitable work opportunities during each of weeks 24-20 through 41-20. Accordingly, under OAR 471-030-0036(3), claimant was not available for work and is therefore not eligible for benefits during those weeks.

DECISION: Order No. 20-UI-157456 is affirmed.

S. Alba and D. P. Hettle.

DATE of Service: February 3, 2021

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.

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.

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 desisyong ito.

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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