

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0284

Affirmed
Ineligible Weeks 13-20 through 48-20

PROCEDURAL HISTORY: On December 1, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work from March 22, 2020 through November 21, 2020 (weeks 13-20 through 47-20) and was therefore ineligible for unemployment insurance benefits for those weeks and until the reason for the denial had ended (decision # 130235). Claimant filed a timely request for hearing. On April 8, 2021, ALJ Logan conducted a hearing, and on April 13, 2021 issued Order No. 21-UI-164724, modifying decision # 130235 to conclude that claimant was not available for work, and therefore ineligible for benefits, from March 22, 2020 through November 28, 2020 (weeks 13-20 through 48-20).¹ On April 15, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant's arguments, submitted on April 15, 2021 and April 18, 2021, contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented her 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. EAB considered claimant's arguments to the extent they were based on the record.

EVIDENTIARY MATTER: At hearing, the ALJ admitted Exhibits 1 and 2 into evidence, but failed to mark either exhibit. As a clerical matter, EAB identified the exhibits based on the ALJ's description of them, and marked them as Exhibits 1 and 2. Audio Record at 5:32 to 7:28.

FINDINGS OF FACT: (1) Claimant worked for Vacasa from May 8, 2018 until March 22, 2020. The employer and claimant were both based in Oregon. In September 2019, claimant accepted a temporary remote assignment with the employer to work in Baja California Sur, Mexico, through March 30, 2020. However, the employer laid claimant off on March 22, 2020 due to the COVID-19 pandemic.

¹ The order under review misidentified the week ending November 28, 2020 as week 47-20, rather than week 48-20.

(2) After being laid off in March 2020, claimant was concerned about the safety of crossing the border and returning to the United States during the pandemic. Claimant remained in Mexico through at least April 8, 2021, except that she returned to Portland, Oregon at the end of August 2020 in order to move some of her belongings to a different storage facility before returning to Mexico.

(3) Claimant filed her initial claim for benefits on March 23, 2020 and claimed benefits for each week from March 22, 2020 through November 28, 2020 (weeks 13-20 through 48-20), the weeks at issue. The Department paid claimant benefits for all of the weeks at issue except for the weeks from November 8, 2020 through November 21, 2020 (weeks 46-20 and 47-20).²

CONCLUSIONS AND REASONS: Claimant was not available for work during the weeks at issue.

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, unless such part time or temporary opportunities would substantially interfere with return to the individual’s regular employment; and

(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

(c) Not imposing conditions which substantially reduce the individual’s opportunities to return to work at the earliest possible time.

* * *

(i) An individual is not available for work in any week claimed under ORS 657.155 if the individual resides or spends the major portion of the week:

(A) In Canada unless the individual is authorized to work in Canada;

(B) In a country not included in the Compact of Free Association with the United States of America; or

(C) outside of the United States, District of Columbia or any territory or political division that is directly overseen by the United States federal government; except,

² EAB has taken notice of this fact, which is contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). Any party that objects to our taking notice of this information must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the noticed fact will remain in the record.

- (i) If the individual is the spouse or domestic partner of an individual stationed at a military base or embassy located outside the United States;
- (ii) Job opportunities exist on the military base or embassy for family members of those stationed there;
- (iii) The individual lives within a reasonable commuting distance to job opportunities at the military base or embassy; and
- (iv) The individual is willing to accept the conditions and terms of the available employment provided they are not inconsistent with ORS 657.195.

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

The record shows that, for the majority of the weeks at issue, claimant was physically located in Mexico, which is neither a country included in the Compact of Free Association with the United States of America³ nor a territory or political division that is directly overseen by the United States federal government. Further, the record does not show that claimant was, during the majority of weeks at issue, a spouse or domestic partner of an individual stationed at a military base or embassy located outside the United States. For that reason, claimant was not available for work during the majority of the weeks at issue, per OAR 471-030-0036(3)(i).

To the extent that the record shows that claimant temporarily returned to the United States in late August 2020, claimant's testimony indicates that her only purpose in doing so was to move her belongings to a less expensive storage site, before returning to Mexico. Transcript at 32 to 33. The record does not show that claimant sought employment located in Oregon during her return visit, and her subsequent return to Mexico suggests that, more likely than not, claimant was not willing to accept permanent or indefinite work opportunities in Oregon during that time. Claimant therefore imposed conditions which substantially reduced her opportunities to return to work at the earliest possible time. Claimant was therefore unavailable for work during late August 2020 per OAR 471-030-0036(3)(c).

In her written argument, claimant referenced OAR 471-030-0036(7)⁴ in suggesting that, because she "sought work in Oregon as well as Mexico ('any other state or country') to cover [her] bases," she should be considered available for work. Claimant's April 18, 2021 Written Argument at 4. However, ORS 657.155 requires individuals to be able to work, available for work, and actively seek work during each week claimed. In order to be eligible for benefits during a week claimed, an individual must separately meet all three of these requirements. OAR 471-030-0036(7) relates specifically to the "actively seeking work" requirement, and is not a basis for determining whether an individual is considered "available for work." The "available for work" requirement instead is determined under the provisions of OAR 471-030-0036(3)-(4). Regardless of whether claimant actively sought work during

³ 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.

⁴ "Nothing in this rule shall prohibit an individual who is a citizen, permanent legal resident, or otherwise legally authorized to work in the United States from seeking work in other labor market areas in any state or country."

the weeks she was in Mexico, claimant is not eligible for benefits because she was not available for work per OAR 471-030-0036(3).

For the above reasons, claimant was not available for work from March 22, 2020 through November 28, 2020 (weeks 13-20 through 48-20) and therefore is ineligible for benefits for those weeks.

DECISION: Order No. 21-UI-164724 is affirmed.

S. Alba and D. Hettle;
A. Steger-Bentz, not participating.

DATE of Service: May 21, 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.

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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 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 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 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 دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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