

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0481

Affirmed
Ineligible Weeks 9-21 through 13-21

PROCEDURAL HISTORY: On March 25, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work during each of the weeks including February 28, 2021 through March 20, 2021 (weeks 9-21 through 11-21) and was therefore ineligible for unemployment insurance benefits for those weeks and until the reason for the denial had ended (decision # 83910). Claimant filed a timely request for hearing. On June 2, 2021, ALJ Frank conducted a hearing, and on June 10, 2021, issued Order No. 21-UI-168516, modifying decision # 83910 to conclude that claimant was not available for work, and therefore ineligible for benefits, during the weeks including February 28, 2021 through April 3, 2021 (weeks 9-21 through 13-21). On June 14, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant did not declare that she provided a copy of her argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also 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 as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) On May 11, 2020, claimant filed her initial claim for benefits.

(2) On February 12, 2021, claimant took a voluntary medical leave of absence from the employer, Oregon Conference of Seventh-Day Adventists, to travel with her daughter to Portland, Oregon, to address her daughter's life-threatening medical condition at a Portland medical facility. Claimant was required to travel with her daughter because her daughter is a minor and claimant "[had] to take part in [her] daughter's medical treatment." Transcript at 6. Claimant's daughter's illness was unrelated to COVID-19 and claimant would have had to take the leave of absence regardless of the COVID-19 outbreak. When claimant began her leave, her expected return to work date was unknown; however, the employer agreed to hold claimant's position until her return.

(3) On February 15, 2021, claimant and her daughter began a weeklong quarantine at their home per the COVID-19 requirements of the Portland medical facility.

(4) On February 21, 2021, claimant and her daughter left their home to travel to Portland for the daughter's medical treatment. Portland is three and a half hours from claimant's home. While in Portland, claimant and her daughter stayed at the Ronald McDonald House. The Ronald McDonald House placed COVID-19-based restrictions on claimant's ability to leave the facility over concerns about potential COVID-19 transmission and the heightened vulnerability of their guests to the virus.

(5) Claimant's daughter's treatment program consisted of "partial hospitalization from 8:00 'till 2:00 p.m.," followed by afternoon "Zoom calls" with claimant's daughter's doctors. Transcript at 8. Claimant was required to be at the hospital with her daughter and to participate in the Zoom calls.

(6) Claimant claimed benefits for each of the weeks including February 28, 2021 through April 3, 2021 (weeks 9-21 through 13-21). These are the weeks at issue.

(7) Claimant's normal labor market was Days Creek and surrounding cities. Claimant's normal labor market did not include Portland. When claimant claimed the weeks at issue, she indicated on her initial weekly certification that she was outside of her normal labor market during the weeks at issue because she needed to be in Portland to address her daughter's medical condition. Claimant neither sought work, nor performed any work seeking activities, while she was in Portland during the weeks at issue. The Department did not pay claimant for any of the weeks at issue.

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; and

(d) Physically present in the normal labor market area as defined by section (6) of this rule, every day of the week, unless:

(A) The individual is actively seeking work outside his or her normal labor market area; or

(B) The individual is infrequently absent from the normal labor market area for reasons unrelated to work search, for less than half of the week, and no opportunity to work or referral to work was missed by such absence.

* * *

OAR 471-030-0036(3) (December 8, 2019; August 2, 2020 through December 26, 2020). ORS 657.155(2) provides:

(a) An individual who leaves the individual's normal labor market area for the major portion of any week is presumed to be unavailable for work within the meaning of this section.

(b) The presumption described in paragraph (a) . . . may be overcome if the individual establishes to the satisfaction of the director that the individual:

(A) Has 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 to which the presumption applies; or

(B) Was required to be outside the individual's normal labor market area to apply for suitable employment within the individual's normal labor market.

Where the Department has not paid benefits to the claimant, claimant has the burden to prove that benefits should have been paid. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

During the weeks at issue, claimant was not physically present in her Days Creek, Oregon labor market. The record demonstrates that claimant took a voluntary medical leave from the employer in order to support the medical needs of her daughter who was fighting a life-threatening illness. During the weeks at issue, claimant spent the major portion of each week in Portland, Oregon, for this purpose. Portland, Oregon, was not within claimant's normal labor market of Days Creek and surrounding cities. Because claimant left her normal labor market area for the major portion of the weeks at issue, she was presumed to be unavailable for work pursuant to ORS 657.155(2)(a). *See also* OAR 471-030-0036(3)(d) (providing that in order to be eligible for benefits an individual must be "available for work," which includes being "[p]hysically present in the normal labor market area . . . every day of the week....").

While ORS 657.155(2)(b)(A) provides that the presumption of unavailability may be overcome in circumstances where the individual can demonstrate, among other things, that they conducted "a bona fide search for work in the labor market area in which the individual spent the major portion of the week," claimant is unable to overcome the presumption of unavailability here because the record establishes that she conducted no search for work while in Portland during the weeks at issue. Instead, claimant was required to be present with her daughter during her daughter's daily partial hospitalizations and during her Zoom calls with the doctors each afternoon and would have been unavailable for work.¹

¹ Claimant is not entitled to the benefit of the OED Temporary COVID-19 rules for unemployment insurance benefits because the record demonstrates that claimant's unavailability was primarily based on her daughter's medical condition and

Likewise, the provisions of ORS 657.155(2)(b)(B), which allow an individual to overcome the presumption of unavailability when they can demonstrate that they were “required to be outside [their] normal labor market area to apply for suitable employment within [their] normal labor market,” are inapplicable to claimant. The preponderance of the evidence demonstrates that claimant’s sole reason for travelling outside of her normal labor market was to support the medical needs of her daughter and claimant took a voluntary medical leave of absence from the employer for this purpose. The record contains no evidence that claimant was required to be outside of her normal labor market area to apply for suitable employment within her normal labor market.

Finally, claimant is not entitled to rely on either of the two “unavailability” exceptions in OAR 471-030-0036(3)(d)(B) because those exceptions apply to individuals who are actively seeking work outside their normal labor market area, or who are “infrequently absent from the normal labor market area for reasons unrelated to work search, for less than half of the week....” The preponderance of the evidence shows that claimant was outside of her normal market area for the major portion of each of the weeks at issue and that she did not actively seek work during this time. For these reasons, claimant was not available for work during the weeks including February 28, 2021 through April 3, 2021 (weeks 9-21 through 13-21) and therefore is ineligible for benefits for those weeks.

DECISION: Order No. 21-UI-168516 is affirmed.

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

DATE of Service: July 20, 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

not a COVID-19 related situation. *See* Oregon Employment Department Temporary Rules for Unemployment Insurance Benefits Flexibility (March 8, 2020), <https://www.oregon.gov/employ/Documents/Temporary%20Rule-2.pdf>.

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.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 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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