

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0496

Affirmed
Eligible Weeks 16-20 through 22-20

PROCEDURAL HISTORY: On November 5, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was available for work and eligible to receive unemployment insurance benefits from April 12, 2020 through May 30, 2020 (decision # 144959). The employer filed a timely request for hearing. On March 15, 2021, ALJ Hoppe conducted a hearing, and on March 22, 2021 issued Order No. 21-UI-163107, reversing decision # 144959 and concluding that claimant was not available for work and therefore ineligible to receive benefits from April 12, 2020 through May 30, 2020 (weeks 16-20 through 22-20), and November 22, 2020 through January 23, 2021 (weeks 48-20 through 3-21).¹ On April 1, 2021, claimant filed an application for review with the Employment Appeals Board (EAB). On May 7, 2021, EAB issued Appeals Board Decision 2021-EAB-0247, reversing Order No. 21-UI-163107 and remanding the matter for further proceedings regarding weeks 16-20 through 22-20, and vacating Order No. 21-UI-163107 regarding weeks 48-20 through 3-21 for lack of jurisdiction. On June 1, 2021, ALJ Hoppe conducted a hearing, and on June 18, 2021 issued Order No. 21-UI-169068 concluding that claimant was available for work and eligible to receive benefits for weeks 16-20 through 22-20. On June 21, 2021, the employer filed an application for review of Order No. 21-UI-169068 with EAB.

WRITTEN ARGUMENT: Claimant's argument contained a revised letter from his doctor, which was 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) Bertsch Moving and Storage employed claimant as a mover and driver until April 9, 2020.

¹ Order No. 21-UI-163107 contained a clerical error. It erroneously stated that claimant was not eligible to receive benefits from April 12, 2020 through May 30, 2020, and from November 22, 2020 through January 23, 2020 (emphasis added).

(2) Claimant had rheumatoid arthritis and asthma, medical conditions that posed a risk for him if he were to contract COVID-19. Exhibit C 1. In March 2020, claimant's doctor advised him to stay home due to the risk of exposure to COVID-19. The doctor's advice was in effect until at least June 1, 2020.

(3) The employer had work claimant could have performed that would have reduced claimant's risk of exposure to COVID-19.

(4) On April 9, 2020, the employer sent claimant home after he was heard coughing at work. The same day, claimant decided to follow his doctor's advice and remain at home to avoid exposure to COVID-19 while working.

(5) On April 10, 2020, claimant filed an initial claim for unemployment insurance benefits.

(6) Claimant claimed and was paid benefits for each week from April 12, 2020 through May 30, 2020, the weeks at issue.

(7) Claimant did not work and stayed in his home due to risk of exposure to COVID-19 during the weeks at issue.

CONCLUSIONS AND REASONS: Claimant was not unavailable for work during the weeks from April 12, 2020 through May 30, 2020.

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). 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) provides that 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[.]

* * *

Because the Department initially paid claimant benefits, the Department had the burden of showing that claimant was not available for work, and not eligible for benefits, during the weeks at issue. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976) (where the Department has paid benefits it has the burden to prove benefits should not have been paid).

The record shows that claimant may not be deemed unavailable for work during the weeks at issue because of the Oregon temporary rules applicable to the unique situations arising due to COVID-19 and the actions to slow its spread. The record establishes that claimant stayed home, and did not work, during the weeks at issue based at least in part on advice from his doctor that he stay home to avoid the risk of exposure to COVID-19. Although the letter claimant provided from his doctor was dated May 19,

2020, after the beginning of the weeks at issue, claimant's testimony established that he stayed home based on advice received from his doctor in March 2020. Exhibit C 1. The applicable rule does not require that the advice from a medical provider be in writing, and the letter from claimant's doctor serves to corroborate claimant's testimony. Exhibit C 1. Moreover, despite the date of the letter, claimant's medical conditions were the same during all of the weeks at issue, and it is therefore logical that the same medical advice would apply during all of the weeks at issue. The employer offered claimant work that claimant could have performed. However, the plain language of the rule states that a person who is advised by their doctor to stay home to avoid the risk of exposure due to COVID-19 may not be deemed unavailable for that reason "even if their employer had work for them they could otherwise have performed." OAR 471-030-0070(5)(a).

Claimant was not unavailable for work and is eligible to receive regular unemployment insurance benefits during and for the weeks from April 12, 2020 through May 30, 2020.

DECISION: Order No. 21-UI-169068 is affirmed.

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

DATE of Service: July 29, 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 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.

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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