

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0541

Reversed
Eligible Weeks 22-20 through 23-20

PROCEDURAL HISTORY: On April 23, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was unavailable for work from May 24, 2020 through June 6, 2020 (weeks 22-20 through 23-20) and was therefore ineligible to receive unemployment insurance benefits for those weeks (decision # 121520). Claimant filed a timely request for hearing. On June 22, 2021, ALJ Janzen conducted a hearing, and on June 23, 2021 issued Order No. 21-UI-169276, affirming decision # 121520. On July 6, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant's written argument contained information that was not part of the hearing record. However, the information is not material to EAB's determination. Therefore, under OAR 471-040-0090(1)(b)(A), EAB considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) Until March 17, 2020, claimant worked in various foodservice positions for two restaurants. On March 17, 2020, both employers laid claimant off due to closures related to the COVID-19 pandemic.

(2) On March 29, 2020, claimant filed her initial claim for benefits. Claimant claimed benefits for the weeks from May 24, 2020 through June 6, 2020, the weeks at issue. The Department paid benefits to claimant for the weeks at issue.

CONCLUSIONS AND REASONS: Claimant actively sought work during the weeks at issue.

To be eligible to receive benefits, unemployed individuals must actively seek work during each week claimed as defined by OAR 471-030-0036(5)(a) (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(4) (effective March 22, 2020 through September 12, 2020) provides that, "unless otherwise notified in writing by the Employment Department," a person will be considered actively seeking work

if they are willing to look for work when state and local emergency declarations related to the coronavirus expire or otherwise are no longer in effect.

The order under review found that “on April 29, 2020, the Employment Department mailed claimant a letter indicating that she was required to actively look for work,” but that “during the weeks at issue, claimant did not report any work-seeking activities.” Order No. 21-UI-169276 at 1. Based on those findings, the order under review concluded that claimant did not actively seek work, and therefore was ineligible for benefits during the weeks at issue. Order No. 21-UI-169276 at 3. The record does not support this conclusion or the findings upon which it is based.

At hearing, the Department’s witness testified that notes in the Department’s claim system indicated that on April 29, 2020, the Department had mailed a letter to claimant “that would be listing the requirements of filing unemployment for this particular claimant, which would have included an active work search [requirement] at that time, unless she was laid off due to COVID, which we have no record of at that time.” Audio Record at 13:30 to 13:56. However, the witness was unable to locate a copy of the letter in the Department’s system in order to read its contents into the record, and no such document was otherwise entered into the hearing record. The Department witness’s statement that the letter “*would have* included an active work search [requirement]” (emphasis added) suggests that she had no actual knowledge of the contents of the letter, and was instead speculating as to its contents. Coupled with the lack of corroborating evidence to support the Department’s testimony, and the overall improbability that the Department would have mailed such a letter to claimant so soon after the beginning of the pandemic and after claimant had been laid off due to pandemic-related shutdowns, the Department has failed to meet its burden¹ to show either that any such letter was mailed to claimant or that, if it did, that it advised claimant to conduct work-seeking activities.

For that reason, the record fails to show, more likely than not, that the Department notified claimant in writing that she was required to perform work-seeking activities during the weeks at issue. The record also contains no indication that claimant was unwilling to look for work when state and local emergency declarations related to the coronavirus expired or were otherwise no longer in effect. For that reason, the Department failed to establish that claimant did not actively seek work, as defined by *former* OAR 471-030-0070(4), for the weeks at issue. Claimant therefore is eligible for benefits for those weeks.

DECISION: Order No. 21-UI-169276 is set aside, as outlined above.

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

DATE of Service: August 5, 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

¹ *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; by logical extension of that principle, where benefits have not been paid claimant has the burden to prove that the Department should have paid benefits).

‘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.

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