

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0716

Affirmed
Ineligible Weeks 14-20 through 19-20

PROCEDURAL HISTORY: On June 29, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work from March 29, 2020¹ through May 9, 2020 (weeks 14-20 through 19-20) and was therefore ineligible for benefits for those weeks (decision # 95522). Claimant filed a timely request for hearing. On August 10, 2021, ALJ Murdock conducted a hearing, and on August 13, 2021 issued Order No. 21-UI-172540, affirming decision # 95522. On September 2, 2021, 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 him 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 argument to the extent it was based on the record.

FINDINGS OF FACT: (1) Claimant's permanent residence was in Tigard, Oregon. His normal labor market included Tigard and southwest Portland, Oregon.

(2) On February 11, 2020, claimant traveled to the Philippines on vacation. Claimant intended to leave the Philippines and return to the United States on April 9, 2020 but was unable to do so because his flight was canceled due to the COVID-19 pandemic.

(3) On March 15, 2020, claimant filed an initial claim for unemployment insurance benefits. Claimant claimed benefits for the weeks of March 29, 2020 through May 9, 2020 (weeks 14-20 through 19-20). These are the weeks at issue. The Department paid claimant benefits for the weeks at issue.

¹ Decision # 95522 stated that claimant was not available for work beginning March 29, 2021. At hearing, the witness for the Department confirmed that the reference to 2021 was a typographical error and the actual date was March 29, 2020. Transcript at 4.

(4) Claimant remained in the Philippines until June 2, 2020. On that date, claimant returned to the United States.

CONCLUSIONS AND REASONS: Claimant was not available for work during the weeks of March 29, 2020 through May 9, 2020 (weeks 14-20 through 19-20).

To be eligible to receive unemployment insurance benefits, unemployed individuals must be able to work, available for work, and actively seek work during each week claimed. ORS 657.155(1)(c). An individual is not considered “available for work” in any week in which the individual spent the major portion of the week outside of the United States, the District of Columbia, or any territory or political division that is directly overseen by the United States federal government² unless the individual spent the major portion of the week: (1) in Canada and was authorized to work in Canada, or (2) in a country included in the Compact of Free Association with the United States of America. OAR 471-030-0036(3)(i) (December 8, 2019). *See also* ORS 657.155(2)(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[.]”).

It is undisputed that during the weeks at issue claimant was in the Philippines, which is outside of the United States. The Philippines is not Canada; nor is it a country included in the Compact of Free Association with the United States of America.³ Because claimant spent the weeks at issue outside of the United States in the Philippines, he was not available for work during those weeks pursuant to OAR 471-030-0036(3)(i).

Due to unique situations arising under COVID-19, the Department has enacted temporary unemployment insurance provisions that, if applicable, can modify the “available for work” analysis. Because the relevant time periods are the weeks of March 29, 2020 through May 9, 2020, the applicable temporary COVID-19 “available for work” provision to consider is temporary rule OAR 471-030-0070(5)(a) (effective March 8, 2020 through September 12, 2020). OAR 471-030-0070(5)(a) provides as follows:

Available for work – ORS 657.155(1)(c) and federal law require a person to be available for work in order to receive unemployment insurance benefits. 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

² An individual who is the spouse or domestic partner of an individual stationed at a military base or embassy located outside of the United States is considered available for work so long as job opportunities exist on the military base or embassy for family members of those stationed there, the individual lives within a reasonable commuting distance of the job opportunities, and the individual is willing to accept the conditions and terms of the available employment. OAR 471-030-0036(3)(i)(C)(i)-(iv). This provision does not apply to claimant because the record does not show he was present in the Philippines because he was the spouse or domestic partner of an individual stationed at a military base or embassy.

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.

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[.]

OAR 471-030-0070(5)(a) does not apply to claimant's situation. By its terms, the provision applies only to ORS 657.155(1)(c), not to ORS 657.155(2). Here, claimant was not available for work during the weeks at issue by operation of ORS 657.155(2) and OAR 471-030-0036(3)(i).

Under ORS 657.155(2)(a) and (b), “[a]n individual who leaves the individual’s normal labor market area for the major portion of any week is presumed to be unavailable for work” unless the individual “[h]as 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” or unless the individual “was required to be outside the individual’s normal labor market area to apply for suitable employment within the individual’s normal labor market.”

The record shows that in February 2020, claimant left Tigard and southwest Portland, his normal labor market, and remained away during the weeks at issue. There is no evidence in the record that claimant conducted a bona fide search for work or was accessible to suitable work while in the Philippines. Nor was there evidence that claimant was required to be in the Philippines to apply for suitable employment within Tigard and southwest Portland. For these reasons, ORS 657.155(2) applies to this case. Therefore, because claimant was not available for work during the weeks at issue by operation of ORS 657.155(2) and OAR 471-030-0036(3)(i), OAR 471-030-0070(5)(a)—which applies only to the “available for work” requirement under ORS 657.155(1)(c)—is not implicated.

Claimant was not available for work during the weeks of March 29, 2020 through May 9, 2020 (weeks 14-20 through 19-20) and therefore was ineligible for unemployment insurance benefits for those weeks.

DECISION: Order No. 21-UI-172540 is affirmed.

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

DATE of Service: October 7, 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.

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 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 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 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
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.