

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0743

Reversed & Remanded

PROCEDURAL HISTORY: On July 21, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work from June 27, 2021 through July 10, 2021 (weeks 26-21 through 27-21) and therefore was not eligible for unemployment insurance benefits for those weeks and until the reason for the denial had ended (decision # 160239). Claimant filed a timely request for hearing. On August 23, 2021, ALJ Frank conducted a hearing at which the employer failed to appear, and on August 25, 2021 issued Order No. 21-UI-173345, modifying decision # 160239 by concluding that claimant was not available for work from June 27, 2021 through July 17, 2021 (weeks 26-21 through 28-21), and from August 1, 2021 through August 14, 2021 (weeks 31-21 through 32-21). On September 8, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant's written argument in reaching this decision.

FINDINGS OF FACT: (1) The employer employed claimant as a delivery driver at one of their Pizza Hut restaurants beginning in 2019 and continuing throughout the period relevant to this decision. In June 2021, claimant received permission to take June 29, 2021 through July 15, 2021 off work so that claimant could work on her friend's farm.

(2) On June 27, 2021, claimant's car broke down and she cancelled her plan to take the time off work from the employer. Following the break down, claimant could drive her car only about two miles from her home before it overheated, which prevented claimant from using the car to deliver pizzas. Claimant lived close enough to the employer's restaurant to drive her car there, or to walk there.

(3) On June 28, 2021, claimant contacted her manager and asked to be placed back on the work schedule. The manager was not able to schedule claimant for work during the weeks of June 27, 2021 through July 10, 2021 (weeks 26-21 and 27-21) because he had already written the work schedule and it was too late to assign any work to claimant.

(4) During the week of July 11, 2021 through July 17, 2021 (week 28-21) and during the weeks of August 1, 2021 through August 14, 2021 (weeks 31-21 and 32-21), claimant worked six hours each week for the employer doing tasks inside the restaurant, like preparing dough. She also applied for work at two coffee shops during week 28-21.

(5) On June 30, 2021, claimant filed an initial claim for unemployment insurance benefits. Claimant claimed benefits for weeks 26-21 through 28-21 and weeks 31-21 through 32-21, the weeks at issue. The Department did not pay claimant benefits for those weeks.

(6) Claimant's labor market was Eugene, Oregon and the surrounding area.

CONCLUSIONS AND REASONS: Order No. 21-UI-173345 is set aside and this matter remanded for further development of the record.

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 * * *.

OAR 471-030-0036(3) (August 2, 2020 through December 26, 2020). Because the Department did not pay claimant benefits for the weeks at issue, claimant bears the burden to establish by a preponderance of the evidence that benefits should have been paid. *See Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

The order under review concluded that claimant was not available for work during the weeks at issue and therefore was not eligible for benefits for those weeks because she lacked adequate transportation and was therefore not capable of accepting and reporting for suitable work opportunities in her labor market. Order No. 21-UI-173345 at 3. The record as developed does not support that conclusion.

The record indicates that claimant satisfied most of the elements of OAR 471-030-0036(3) during the weeks at issue. Claimant was willing to work full time, part time and to accept temporary work opportunities, given that she requested to be placed back on the employer's work schedule for weeks 26-

21 and 27-21, worked six hours per week for the employer during weeks 28-21, 31-21, and 32-21, and applied for work at two coffee shops during week 28-21. The record does not show that claimant imposed any conditions that substantially reduced her opportunities to return to work during the weeks at issue. Finally, claimant was physically present in her labor market of Eugene, Oregon and the surrounding area during the weeks at issue.

However, further record development is needed to determine whether claimant was capable of accepting and reporting for any suitable work opportunities within her labor market during the weeks at issue. Although claimant could drive her car only about two miles from her home during the weeks at issue, which might hinder her ability to accept and report for any suitable work opportunity in her labor market, it is unknown from the record whether alternative means of transportation were available to her. Therefore, the ALJ should develop the record on remand to determine whether claimant was capable of accepting and reporting for any suitable work opportunities within her labor market during the weeks at issue by using public transportation, bicycling, carpooling, using a taxi or ride-share service, receiving rides from others, or any other reliable form of transportation.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary for a determination of whether claimant was capable of accepting and reporting for any suitable work opportunities within her labor market during the weeks at issue, Order No. 21-UI-173345 is reversed, and this matter is remanded.

DECISION: Order No. 21-UI-173345 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: October 14, 2021

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-173345 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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 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.

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.