

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0835

Modified
Benefits Allowed in Part, Denied in Part

PROCEDURAL HISTORY: On August 23, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant had failed to actively seek work during the weeks including July 25, 2021 through August 14, 2021 (weeks 30-21 through 32-21) and therefore was ineligible to receive unemployment insurance benefits during those weeks (decision # 111527). Claimant filed a timely request for hearing. On September 21, 2021, ALJ Micheletti conducted a hearing, and on September 27, 2021 issued Order No. 21-UI-175644, affirming decision # 111527. On October 13, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

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

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of a letter mailed to claimant by the Department on July 27, 2021, and has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. This evidence is necessary to complete the record under OAR 471-041-0090(1)(a). Any party that objects to our admitting EAB Exhibit 1 must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the exhibit(s) will remain in the record.

FINDINGS OF FACT: (1) Claimant claimed benefits for the weeks including July 25, 2021 through August 14, 2021 (weeks 30-21 through 32-21). These are the weeks at issue. The Department paid claimant benefits for weeks 30-21 and 31-21, and did not pay claimant benefits for week 32-21.¹

¹ EAB has taken notice of these facts, which are contained in Employment Department records. OAR 471-041-0090(1). Any party that objects to our taking notice of this information must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the noticed fact will remain in the record.

(2) During the weeks at issue, claimant was working part-time for her regular employer.

(3) On Tuesday, July 27, 2021, the Department mailed a letter to claimant advising her that she was required to seek work during each week of benefits that she claimed by performing five work seeking activities, two of which must be direct contacts with employers who might hire her. EAB Exhibit 1 at 1. The letter also advised claimant that “failure to seek work as required [would] result in a denial of benefits.” EAB Exhibit 1 at 2.

(4) Claimant neither sought work outside of her regular employer nor submitted work searches to the Department for any of the weeks at issue. Claimant believed that she was not required to seek work at that time because she was working part time, she had heard on the news that benefits for part-time workers were going to be extended through the end of 2021, and the advisory sent to her by the Department did not clearly indicate that the requirements applied to claimants who were working part-time. Audio Record at 7:30 to 8:15.

CONCLUSIONS AND REASONS: Claimant was eligible for benefits for the week of July 25, 2021 through July 31, 2021 (week 30-21) and was ineligible for benefits for the weeks including August 1, 2021 through August 14, 2021 (weeks 31-21 through 32-21).

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, during a state of emergency declared by the Governor under ORS 401.165, the Department may waive, otherwise limit, or modify the requirements of OAR 471-030-0036. OAR 471-030-0071 (September 13, 2020). Paragraph (4) of Oregon Employment Department Temporary Rule for Unemployment Insurance Flexibility (March 8, 2020), <http://records.sos.state.or.us/ORSOSWebDrawer/Recordpdf/7604239> [hereinafter OED Temporary COVID-19 Rule], provides the following:

The federal Families First Coronavirus Response Act permits states to temporarily modify their unemployment insurances laws regarding work search requirements on an emergency basis to respond to the spread of COVID-19 (Section 4102(b)). Because of the vital importance to public health and safety of mitigating the spread of COVID-19, social distancing measures must be maintained. Accordingly, effective the week ending March 28, 2020, notwithstanding OAR 471-030-0036, and unless otherwise notified in writing by the Employment Department, a person will be considered actively seeking work for purposes of ORS 657.155 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 concluded that claimant was ineligible for benefits during the weeks at issue because she did not actively seek work and there “are no good cause exceptions to the work search requirement.” Order No. 21-UI-175644 at 3. The record does not support the conclusion of the order under review that claimant was ineligible for benefits for each of the weeks at issue because, for the reasons that follow, claimant was eligible for benefits for the week of July 25, 2021 through July 31, 2021 (week 30-21).

The weeks at issue fell within the period during which the OED Temporary COVID-19 Rule was effective. Therefore, unless the Department had notified claimant in writing that she was required to

seek work, claimant was not required to do so during those weeks. The record shows that the Department *did* so notify claimant in a letter dated July 27, 2021, which fell within week 30-21. As the letter was mailed to claimant on a Tuesday, it would have been unlikely to reach claimant earlier than Thursday of that week.² The record does not show that claimant was advised, or otherwise aware, of the requirement that she begin looking for work earlier than the date on which she received that letter. It cannot be said that claimant had meaningful notice of the work search requirements for week 30-21 when she had no reason to believe that the requirements applied to her until the week was more than half over. Therefore, claimant was not required to seek work during week 30-21 and is not ineligible for benefits that week for failing to have done so.

However, the record shows that, more likely than not, claimant had written notice from the Department that she was required to seek work prior to the start of week 31-21. Therefore, the OED Temporary COVID-19 Rule did not apply in regards to the work search requirements for weeks 31-21 and 32-21.. In her written argument, claimant asserted that she had not performed work seeking activities during the weeks at issue for two reasons: first, because she had heard on the news that “part-time workers [would be] able to claim unemployment benefits through the end of [2021]” due to the passage of H.B. 3178 in the Oregon Legislature, which “doesn’t even say that 5 activities need to be done weekly to qualify”; and second, because the notice that the Department sent to claimant advised her that she must “look for full time, part time, or temporary employment” and she was already working part-time. Claimant’s Written Argument at 1.

To claimant’s first point, H.B. 3178 is not relevant to this case. The bill as passed made certain amendments to ORS 657.100, particularly in regards to the definition of “unemployed” under that statute.³ While claimant is correct that H.B. 3178 does not include a requirement to perform work seeking activities, the requirement to actively seek work is codified under ORS 657.155, and is not affected, for purposes of this case, by changes made to ORS 657.100. To claimant’s second point, the notice that the Department mailed to claimant on July 27, 2021 did not specify any particular applicability, or lack thereof, to claimants who were working part time. Rather, it stated unequivocally that claimant was required to actively seek work during each week that she claimed, and that failure to provide a work search or to look for work could result in a delay or denial of her benefits. EAB Exhibit 1 at 1. The letter drew no distinction between claimants who were working part time and those who were not working at all. Claimant cited no basis for having read such a distinction into the notice other than the fact that she had heard about H.B. 3178 on the news.

In sum, while claimant’s misinterpretations of the law and eligibility requirements are understandable, they were the result of her reliance on the news—rather than official communications from the Department—and a misreading of the notice that the Department sent to her. They cannot be reasonably attributed to the Department. For that reason, the record does not show that claimant relied on a misrepresentation of fact by the Department that caused her to fail to take actions required for her to be eligible for benefits, and as such, equitable estoppel does not apply here.

² EAB takes notice of the generally cognizable fact that first class domestic mail sent through the U.S. Postal Service is estimated to take 1-3 business days after mailing to be delivered. See <https://www.usps.com/ship/first-class-mail.htm>.

³ See <https://olis.oregonlegislature.gov/liz/2021R1/Measures/Overview/HB3178>

Because claimant did not perform work seeking activities during weeks 31-21 or 32-20 and because neither the OED Temporary COVID-19 Rule nor equitable estoppel apply, claimant is not eligible for benefits during these two weeks.

DECISION: Order No. 21-UI-175644 is modified, as outlined above.

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

DATE of Service: November 17, 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 desisyong ito.

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 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
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