

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0926

Affirmed
Ineligible Weeks 16-20 through 24-20 and 48-20
Eligible Weeks 25-20 through 27-20

PROCEDURAL HISTORY: On December 18, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work for the weeks including April 12, 2020 through November 28, 2020 (weeks 16-20 through 48-20) and was therefore not eligible to receive unemployment insurance benefits for those weeks and until the reason for the denial had ended (decision # 163459). Claimant filed a timely request for hearing. On October 18, 2021, ALJ Ramey conducted a hearing, and on October 26, 2021 issued Order No. 21-UI-178056, modifying decision # 163459 by concluding that claimant was ineligible for benefits for the weeks including April 12, 2020 through June 10, 2020 (weeks 16-20 through 24-20) and November 22, 2020 through November 28, 2020 (week 48-20) but was eligible for benefits for the weeks including June 11, 2020 through July 4, 2020 (weeks 25-20 through 27-20).¹ On November 5, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant's written arguments 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 documents enclosed with claimant's written arguments, and has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. 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.

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the portion of the order under review concluding that claimant had earned in excess of his weekly benefit amount, and was therefore ineligible to receive benefits for the week of November 22, 2020 through November

¹ As the Department's claim weeks always end on a Saturday, the order under review presumably intended to identify week 24-20 as the week ending June 13, 2020 and week 25-20 as the week beginning on June 14, 2020.

28, 2020 (week 48-20) is **adopted**. The remaining portion of this decision addresses claimant's eligibility for benefits for the weeks including April 12, 2020 through July 4, 2020 (weeks 16-20 through 27-20).

FINDINGS OF FACT: (1) On September 22, 2019, claimant began attending Oregon State University (OSU), intending to graduate with a bachelor's degree in June 2023.

(2) From April 12, 2020 through June 10, 2020, claimant was enrolled in classes full time at OSU, taking 12 credit hours. Claimant's class schedule during that academic term was Monday, Wednesday, and Friday from 11:00 a.m. to 4:50 p.m., Tuesday from 11:00 a.m. to 12:00 p.m. and Thursday from 3:00 p.m. to 5:50 p.m. During that term, all of claimant's classes were held remotely. While claimant's instructors did not take attendance, claimant was required to attend his classes. Further, claimant did not wish to miss his classes, as he was receiving scholarships that required him to maintain good grades. In addition to his scholarships, claimant received student loans for his tuition and other expenses. Claimant understood that he would have to begin paying his student loans back if he dropped out of school.

(3) Claimant did not attend school between June 11, 2020 and July 4, 2020 because the academic term had concluded.

(4) Claimant filed an initial claim for unemployment insurance benefits on April 19, 2020, and the Department established his weekly benefit amount as \$151. Claimant subsequently claimed benefits for the weeks including April 12, 2020 through July 4, 2020 (weeks 16-20 through 27-20). These are the weeks at issue. The Department paid claimant benefits for the weeks at issue. The Department determined that claimant's labor market during the weeks at issue was Corvallis, Oregon and the surrounding area.

(5) On his initial claim, claimant indicated that he registered for classes during March 2020, and that the last day to get a refund on tuition was April 5, 2020. Claimant also indicated on his initial claim that the classes he was enrolled in were not available on other days or at other times, that if he was offered work that conflicted with his class schedule he would "have [his] work scheduled around classes like always," that he had never quit school in order to work, and that his annual cost of school attendance was about \$26,000. Transcript at 8.

(6) During the weeks at issue, claimant was looking for part-time work in foodservice. Claimant had previously performed this type of work part-time while attending school. This type of work was customarily performed in claimant's labor market from 8:00 a.m. to 9:00 p.m., Sunday through Saturday.

CONCLUSIONS AND REASONS: Claimant was not available for work during the weeks including April 12, 2020 through June 13, 2020 (weeks 16-20 through 24-20), but was available for work during the weeks including June 14, 2020 through July 4, 2020 (weeks 25-20 through 27-20).

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) (December 8, 2019). 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)(d) (effective March 8, 2020 through September 12, 2020) provides that a person will not be deemed unavailable for work because they normally work less than full-time and are only available for less than full-time work.

During the weeks including April 12, 2020 through June 10, 2020 (weeks 16-20 through 24-20), claimant was enrolled full time at OSU. Although school attendance is not an automatic bar to eligibility for benefits, it may be such a bar when an individual is seeking work that is customarily performed during hours and days that the individual is attending classes. This is because OAR 471-030-0036(3)(a) and (c) require an individual to be willing to work during all of the usual hours and days of the week customary for the work being sought, and require the individual not to impose conditions which substantially reduce their opportunities to return to work at the earliest possible time. An individual who is unwilling to drop classes (or school enrollment entirely) in order to accept work in their labor market, should a scheduling conflict arise between the two, is therefore considered unavailable for work because they have demonstrated an unwillingness to work the usual hours and days customary for the work being sought and have imposed a condition which substantially reduces their opportunity to return to work at the earliest possible time. Claimant has shown an unwillingness to work the usual hours and days and imposed such a condition here.

At hearing, in response to the ALJ's question as to whether claimant would have been willing to drop out of school in order to work, claimant testified that ". . . if I couldn't afford school there'd be nothing else I could do. I'd be pretty—it was tough, you know, and if it came down to it yeah, but luckily I'd had unemployment to prevent me from having to take such a drastic measure in my life[.]" Transcript at 22. Although this suggests that claimant might have dropped class enrollment in order to accept work if he had no other income or benefits, it does not show that claimant was willing to work during all of the hours and days customary for the work he was seeking within his labor market. It also suggested that claimant believed that he would not have to resolve such a conflict because he could find an employer who could accommodate his class schedule, and that he could rely on unemployment benefits until that happened. This is further supported by claimant's responses on his initial claim, in which he stated that he would have an employer adjust his work schedule to accommodate his class schedule; and the

likelihood that he would have faced a significant financial loss if he lost his scholarships, could not have obtained a refund for his tuition, and would have had to begin repaying his student loans. Therefore, claimant's testimony and statements on his initial claim showed that he was, more likely than not, unwilling to work during all of the hours and days customary in his labor market for the type of work he was seeking.

In claimant's November 24, 2021 written argument, claimant asserted that he should have been considered available for work because guidance from the Department had advised him to answer "no" to the question "Is there any reason you can't begin full time work now?" if he "normally worked part-time and [is] willing to work part-time when the [COVID-19 pandemic] ends." Claimant's November 24, 2021 Written Argument at 1. While claimant typically would also be considered unavailable for work under OAR 471-030-0036(3)(a) specifically because he was not willing to work full time, claimant is correct that the temporary rule OAR 471-030-0070(5)(d), effective during the weeks at issue, did not require claimant to be willing to work full-time since he had normally only worked part-time. However, the temporary rule did not amend or suspend the requirement under OAR 471-030-0036(3)(a) that he be available to work during all of the hours and days customary for the type of work he was seeking, regardless of how many hours he was required to be willing to work on a weekly basis. For that reason, even though claimant was not required to be willing to work full time during the weeks at issue, he was nevertheless unavailable for work.

For the above reasons, claimant was not available for work during weeks 16-20 through 24-20, and was therefore ineligible for benefits during those weeks. Because claimant was not attending classes during weeks 25-20 through 27-20, claimant was available for work, and therefore eligible for benefits, during those weeks.

DECISION: Order No. 21-UI-178056 is affirmed.

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

DATE of Service: December 13, 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.

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