

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0961

Affirmed
Ineligible Weeks 15-21 Through 33-21
Eligible Week 34-21

PROCEDURAL HISTORY: On September 13, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work from April 11, 2021 through August 28, 2021 (weeks 15-21 through 34-21) and was therefore not eligible for unemployment insurance benefits for those weeks and until the reason for the denial had ended (decision # 112602). Claimant filed a timely request for hearing. On October 29, 2021, ALJ Wardlow conducted a hearing, and on November 1, 2021 issued Order No. 21-UI-178633, modifying decision # 112602 by concluding that claimant was not available for work and therefore not eligible for benefits from April 11, 2021 through August 21, 2021 (weeks 15-21 through 33-21) but was available for work and therefore eligible for benefits from August 22, 2021 through August 28, 2021 (week 34-21). On November 10, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant submitted written arguments on November 10, 2021 and November 30, 2021. Claimant's arguments 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 arguments to the extent they were based on the record.

In both arguments, claimant mentioned that "[t]he statement made that one who is a forestry technician [has] to be available for 24 hrs. 7 days a week was misspoken I misspoke and am now being ostracized, when I spoke with the first adjudicator, I was very busy and under a lot of pressure and said I had to be available 24/7 for the job, which is not only ludicrous but dangerous." November 10, 2021 Written Argument at 1; November 30, 2021 Written Argument at 2. The quoted passage suggests that claimant believed that the reason the Department concluded claimant was not available for work and therefore not eligible for benefits was because he was not willing to work 24 hours a day, seven days per week.

However, the record shows that neither the Department nor the order under review took the position that claimant was required to be willing to work 24 hours a day, seven days per week to be eligible to receive benefits. Rather, at hearing, the witness for the Department testified that the Department determined that claimant was not available for work and therefore not eligible for benefits due to his lack of transportation. *See* Transcript at 8 (“This is an ongoing denial until the Claimant – until the Claimant resolves the transportation issue.”). Moreover, the order under review concluded that claimant’s lack of reliable transportation during weeks 15-21 through 33-21 made claimant incapable of accepting and reporting for suitable work opportunities within the labor market in which he sought work, which, under OAR 471-030-0036(3)(b), meant that claimant was not available for work and therefore not eligible for benefits for those weeks. Order No. 21-UI-178633 at 3. The order under review further concluded that after claimant moved to Sisters, Oregon and had sufficient transportation to report for suitable work opportunities there, he became available for work and therefore was eligible for benefits for the week of August 22, 2021 through August 28, 2021 (week 34-21). Order No. 21-UI-178633 at 3. The analysis of the order under review was correct, and demonstrates that the basis for claimant’s denial of benefits was not due to any requirement that claimant be willing to work 24 hours a day, seven days per week.

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the order under review is **adopted**.

DECISION: Order No. 21-UI-178633 is affirmed.

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

DATE of Service: December 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 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

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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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