

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0980

Order No. No. 21-UI-178977 Affirmed ~ Ineligible Weeks 30-21 through 33-21
Order No. No. 21-UI-178976 Affirmed ~ Ineligible Weeks 25-21 through 34-21

PROCEDURAL HISTORY: On September 24, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant had failed to actively seek work during each of the weeks including July 25, 2021 through August 21, 2021 (weeks 30-21 through 33-21) and therefore was ineligible to receive Pandemic Emergency Unemployment Compensation (PEUC)¹ benefits for those weeks (decision # 140835). Also on September 24, 2021, the Department served notice of an administrative decision concluding that claimant was not available for work during each of the weeks including June 20, 2021 through August 28, 2021 (weeks 25-21 through 34-21) and therefore was ineligible to receive Pandemic Emergency Unemployment Compensation (PEUC)² benefits for those weeks (decision # 141551). Claimant filed timely requests for hearing on decisions # 140835 and 141551. On November 3, 2021, ALJ Janzen conducted a consolidated hearing on both administrative decisions, and on November 4, 2021 issued Order No. 21-UI-178977, affirming decision # 140835, and Order No. 21-UI-178976, affirming decision # 141551. On November 19, 2021, claimant filed applications for review of Orders No. 21-UI-178977 and 21-UI-178976 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 21-UI-178977 and 21-UI-178976. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2021-EAB-0980 and 2021-EAB-0981).

¹ EAB has taken notice of the type of benefits the Department denied, 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 EAB has taken notice of the type of benefits the Department denied, 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.

Based on a *de novo* review of the entire consolidated record in these cases, and pursuant to ORS 657.275(2), Order No. 21-UI-178976, concluding that claimant was not available for work, and therefore ineligible for benefits, for the weeks including June 20, 2021 through August 28, 2021 (weeks 25-21 through 34-21) is **adopted**. The remainder of these consolidated decisions addresses whether, as concluded in Order No. 21-UI-178977, claimant failed to actively seek work, and was therefore ineligible for benefits, during each of the weeks including July 25, 2021 through August 21, 2021 (weeks 30-21 through 33-21).

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 her 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) On March 29, 2020, claimant filed an initial claim for unemployment insurance benefits. Claimant claimed and was paid benefits for each of the weeks including July 25, 2021 through August 21, 2021 (weeks 30-21 through 33-21). These are the weeks at issue.

(2) The Department determined that claimant's customary work was as a school director, and that claimant's labor market was the Ashland, Talent, Phoenix, and Medford areas. In claimant's labor market, work as a school director customarily was performed on Monday through Friday, from 8:00 a.m. to 5:00 p.m.

(3) The Department sent claimant a letter notifying her that, effective the week of July 25, 2021 through July 31, 2021 (week 30-21), she was required to search for work and submit her work searches to the Department for each week claimed.

(4) During each of the weeks at issue, claimant was self-employed, developing an arts and crafts business in which she had invested more than \$11,000. Claimant neither sought work outside of her self-employment nor submitted work searches to the Department for any of the weeks at issue.

CONCLUSIONS AND REASONS: Claimant did not actively seek work, and was therefore ineligible for benefits, for the weeks including July 25, 2021 through August 21, 2021 (weeks 30-21 through 33-21).

Actively Seeking Work. 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). For purposes of ORS 657.155(1)(c), an individual is actively seeking work when doing what an ordinary and reasonable person would do to return to work at the earliest opportunity. OAR 471-030-0036(5)(a). With few exceptions, none of which apply here, individuals are "required to conduct at least five work seeking activities per week, with at least two of those being direct contact with an employer who might hire the individual." OAR 471-030-0036(5)(a). "Direct contact" means "making contact with an employer . . . to inquire about a job opening or applying for job openings in the manner required by the hiring employer." OAR 471-030-0036(5)(a)(B). 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>, provides the following:

The federal Families First Coronavirus Response Act permits states to temporarily modify their unemployment insurance 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 OED Temporary COVID-19 Rule was in effect during the weeks at issue. However, the record shows—and claimant did not dispute—that prior to the start of the week including July 25, 2021 through July 31, 2021 (week 30-21), claimant had written notice from the Department that she was required to seek work and submit her work searches when claiming benefits for week 30-21 and any weeks thereafter. Transcript at 6. Accordingly, the OED Temporary COVID-19 Rule did not apply with regard to claimant’s work search requirements for weeks 30-21 through 33-21. At hearing, claimant admitted that she did not perform any work seeking activities from July 25, 2021 through August 21, 2021 (weeks 30-21 through 33-21). Transcript at 12. Because claimant did not perform any work-seeking activities during those weeks as required, claimant is not eligible for benefits for weeks 30-21 through 33-21.

DECISION: Orders No. 21-UI-178977 and 21-UI-178976 are affirmed.

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

DATE of Service: December 30, 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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