

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0014

Affirmed
Ineligible Week 33-21

PROCEDURAL HISTORY: On September 14, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work during the week of August 15, 2021 through August 21, 2021 (week 33-21) and was therefore not eligible to receive unemployment insurance benefits for that week (decision # 102334). Claimant filed a timely request for hearing. On November 29, 2021, ALJ Logan conducted a hearing, and on November 30, 2021 issued Order No. 21-UI-180788, affirming decision # 102334. On December 20, 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.

FINDINGS OF FACT: (1) On April 1, 2020, claimant filed an initial claim for unemployment insurance benefits.

(2) Claimant claimed and was denied benefits for the week of August 15, 2021 through August 21, 2021 (week 33-21), the only week at issue.

(3) Claimant's labor market was the Portland, Oregon metropolitan area. During the week at issue, claimant sought business development work.

(4) From August 15, 2021 through August 18, 2021, claimant was in New York to visit his father. On August 19, 2021, claimant was traveling from New York back to his home in Oregon.

(5) While in New York, claimant sought work opportunities in the Portland metropolitan area. One of the work opportunities was with a New York employer that had a position potentially becoming available in the Portland area. Claimant did not look for any positions that were in the New York area during the week at issue.

(6) All of the work that claimant sought during the week at issue could have been performed remotely. Claimant had his computer with him in New York and was prepared to interview with any employer regarding work in Oregon.

CONCLUSIONS AND REASONS: Claimant was not available for work from August 15, 2021 through August 21, 2021 (week 33-21).

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). ORS 657.155(2) provides, in relevant part:

(a) An individual who leaves the individual's normal labor market area for the major portion of any week is presumed to be unavailable for work within the meaning of this section.

(b) The presumption described in paragraph (a) of this subsection may be overcome if the individual establishes to the satisfaction of the director that the individual:

(A) Has conducted a bona fide search for work and has been reasonably accessible to suitable work in the labor market area in which the individual spent the major portion of the week to which the presumption applies[.]

(B) Was required to be outside the individual's normal labor market area to apply for suitable employment within the individual's normal labor market.

OAR 471-030-0036(5)(a) (December 6, 2019) provides, in relevant part, that "an individual's normal labor market shall be the geographic area surrounding the individual's permanent residence within which employees in similar circumstances are generally willing to commute to seek and accept the same type of work at a comparable wage. The geographic area shall be defined by the Employment Department * * * [.]

Claimant's normal labor market area was the Portland metropolitan area. Claimant was either in New York or traveling from New York to Oregon for the major portion of week 33-21. Therefore, claimant was not physically present in his normal labor market area for more than half of week 33-21 and is presumed to have been unavailable for work that week.

The record shows that claimant was in New York to visit his father during the week at issue. Claimant did not assert, and the record does not otherwise show that, under ORS 657.155(2)(b)(B), claimant was required to be in New York to apply for suitable employment within his normal labor market. Thus, under ORS 657.155(2)(b)(A), to overcome the presumption that he was unavailable for work, claimant was required to establish that he actively sought work in the labor market area in which he spent the major portion of the week, which was New York. Although claimant sought work from one New York employer, it was work to be performed in Oregon. The other work claimant sought while visiting New York was likewise for work in Oregon. Claimant therefore failed to establish that he actively sought

work in New York, or overcame the presumption that he was unavailable for work during the week at issue. For these reasons, claimant is ineligible for benefits for week 33-21.

DECISION: Order No. 21-UI-180788 is affirmed.

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

DATE of Service: January 28, 2022

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 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 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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