

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0037

Affirmed
Ineligible Week 41-21

PROCEDURAL HISTORY: On November 1, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not able to work during the week of October 10, 2021 to October 16, 2021 (week 41-21) and therefore was ineligible to receive unemployment insurance benefits for that week and until the reason for denial had ended (decision # 124406). Claimant filed a timely request for hearing. On December 9, 2021, ALJ Janzen conducted a hearing, and on December 10, 2021 issued Order No. 21-UI-181605, affirming decision # 124406. On December 30, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) During 2021, claimant was employed as a retail worker in Hermiston, Oregon and was a high school student.

(2) On October 10, 2021, claimant tested positive for COVID-19. Claimant was unable to work due to her COVID-19 infection and her doctor advised her to stay at home from work and quarantine for the next ten days. Claimant notified the employer of her COVID-19 infection and began her quarantine.

(3) On October 12, 2021, claimant filed an initial claim for unemployment insurance benefits. Claimant claimed benefits for the week of October 10, 2021 to October 16, 2021 (week 41-21). This is the week at issue. The Department did not pay claimant benefits for the week at issue. The Department determined that claimant's labor market during the weeks at issue was Hermiston and surrounding areas. Claimant's customary work was retail, which is performed in claimant's labor market all days of the week from 7:00 a.m. to 9:00 p.m. During the week at issue, claimant sought other work at the behest of the Department, and despite her desire to remain with her current employer. The other employers where claimant applied for work "all chuckled" and told claimant they would not offer her employment "until [her] doctor releases [her]." Transcript at 16. Claimant also applied for an online phone service position because she thought it would allow her to work from home. Because the online phone service required in-person training, the online phone service was also not willing to hire claimant until she received a release from her doctor.

(4) Claimant experienced “severe complications” due to her COVID-19 infection, which extended beyond her initial ten-day quarantine period and included exhaustion and migraines. Transcript at 16. Due to these complications, claimant’s doctor would not release her back to work after her ten-day quarantine had expired.

(5) On November 5, 2021, claimant’s doctor released claimant to return to work effective November 8, 2021.

CONCLUSIONS AND REASONS: Claimant was not available for work during week 41-21 and was therefore ineligible to receive unemployment insurance benefits for week 41-21.

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). Because the Department did not pay claimant benefits for weeks 41-21, claimant has the burden to prove that the Department should have paid benefits for those weeks. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976) (where the Department has paid benefits it has the burden to prove benefits should not have been paid; by logical extension of that principle, where benefits have not been paid claimant has the burden to prove that the Department should have paid benefits).

Claimant was not “available for work” during the week at issue. Temporary OAR 471-030-0036(3) (September 26, 2021 through March 24, 2022) provides in relevant part that a person shall be considered available for work if, at a minimum, the individual is:

* * *

(b) Capable of accepting and reporting for suitable work opportunities within the labor market in which work is being sought, including temporary and part time opportunities[.]

* * *

During the week at issue, claimant’s medical provider directed claimant to quarantine at her home for a period of ten days and she was therefore unable to report to her current employer, or any other employer within claimant’s labor market, for the work she sought to perform. Thus, because claimant was not capable of accepting and reporting for suitable work opportunities within her labor market during the weeks at issue, claimant was not “available for work” for purposes of temporary OAR 471-030-0036(3), and is therefore ineligible for benefits for week 41-21.

DECISION: Order No. 21-UI-181605 is affirmed.

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

DATE of Service: February 9, 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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