

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0061

Affirmed
Late Request for Hearing Allowed
Ineligible Weeks 20-21 through 26-21

PROCEDURAL HISTORY: On June 11, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work from May 16, 2021 through May 29, 2021 (weeks 20-21 through 21-21) and therefore ineligible to receive unemployment insurance benefits for those weeks and until the reason for denial had ended (decision # 100113). On July 1, 2021, decision # 100113 became final without claimant having filed a request for hearing. On July 13, 2021, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on July 29, 2021 issued Order No. 21-UI-171415, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by August 12, 2021. On August 2, 2021, claimant filed a timely response to the appellant questionnaire. On October 13, 2021, the Office of Administrative Hearings (OAH) mailed a letter to the parties stating that Order No. 21-UI-171415 was vacated and that a hearing would be scheduled to determine whether claimant's late request for hearing on decision # 100113 should be allowed and, if so, the merits of that decision.

On December 16, 2021, ALJ Roberts conducted a hearing, and on December 21, 2021 issued Order No. 21-UI-182342, allowing claimant's late request for hearing on decision # 100113 and modifying the decision by concluding that claimant was not available for work from May 16, 2021 through July 3, 2021 (weeks 20-21 through 26-21) and therefore ineligible to receive benefits for those weeks. On January 4, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant's January 27, 2021 written argument when reaching this decision. In his argument, claimant asserted that the Department failed to "communicate[] clearly" the applicable benefits eligibility criteria for a claimant to be considered "available for work" when seeking work in another country. Written Argument at 1. Claimant pointed specifically to the language of OAR 471-030-0036(3)(i) (December 8, 2019) and argued that it was "contradicted" by the language of OAR 471-030-0036(7) with respect to any "country restriction[s]" imposed by the Department on benefits eligibility. Written Argument at 1. However, the express language used in these two rules are not contradictory to one another.

To be eligible to receive unemployment insurance benefits, unemployed individuals must be available for work during each week claimed. ORS 657.155(1)(c). OAR 471-030-0036(3)(i) expands on the availability requirement for benefits eligibility by stating that an individual is not considered “available for work” in any week in which the individual spent the major portion of the week outside of the United States, the District of Columbia, or any territory or political division that is directly overseen by the United States federal government¹ unless the individual spent the major portion of the week: (1) in Canada and was authorized to work in Canada, or (2) in a country included in the Compact of Free Association with the United States of America². OAR 471-030-0036(3)(i). Meanwhile, OAR 471-030-0036(7) generally addresses an individual’s right to seek work in another country and provides that nothing in OAR 471-030-0036 shall prohibit a citizen, permanent legal resident, or an individual otherwise legally authorized to work in the United States from seeking work in any country. Thus, instead of being contradictory, the two rules address different issues related to international work. The former rule specifically addresses the limitations on an individual’s ability to work in another country and still be deemed “available” for purposes of *benefits eligibility*, whereas the latter rule addresses an individual’s more general *right to seek work* in another country. Claimant did not dispute, either at hearing or in his written argument, that he was not available for work pursuant to OAR 471-030-0036(3)(i).

To the extent claimant seeks to assert in his argument that the Department should be estopped from denying him benefits due to his decision to travel to the United Kingdom to seek work based on his reliance on language from the online claim system webpage, estoppel is not supported by the record. The doctrine of equitable estoppel “requires proof of a false representation, (1) of which the other party was ignorant, (2) made with the knowledge of the facts, (3) made with the intention that it would induce action by the other party, and (4) that induced the other party to act upon it.” *Keppinger v. Hanson Crushing, Inc.*, 161 Or App 424, 428, 983 P2d 1084 (1999) (citation omitted). In addition, to establish estoppel against a state agency, a party “must have relied on the agency’s representations and the party’s reliance must have been reasonable.” *State ex rel SOS v. Dennis*, 173 Or App 604, 611, 25 P3d 341, *rev den*, 332 Or 448 (2001) (citing *Dept. of Transportation v. Hewett Professional Group*, 321 Or 118, 126, 895 P2d 755 (1995)). Here, claimant submitted a screenshot of language from the online claims system webpage which purported to provide guidance to individuals seeking to retain benefits eligibility while “away from [their] permanent residence for more than 3 days.” Exhibit 4. However, nothing in this guidance made any specific reference to benefits eligibility with respect to an individual travelling to another country to seek work. Exhibit 4. While claimant’s mistake as to this language is understandable, it does not support a finding that the Department should be estopped because there is nothing in the record to support a conclusion that the Department created the webpage with knowledge of claimant’s specific facts in mind, or that the Department (or any of their employees), intended for claimant to rely on the webpage language to his detriment.

¹ An individual who is the spouse or domestic partner of an individual stationed at a military base or embassy located outside of the United States is considered available for work so long as job opportunities exist on the military base or embassy for family members of those stationed there, the individual lives within a reasonable commuting distance of the job opportunities, and the individual is willing to accept the conditions and terms of the available employment. OAR 471-030-0036(3)(i)(C)(i)-(iv).

² The countries included in the Compact of Free Association with the United States of America are the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. *See* 48 U.S.C. §§ 1901-1973.

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-182342 is affirmed.

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

DATE of Service: February 11, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymzmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.