

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0117-R

Request for Reconsideration Allowed
EAB Decision 2022-EAB-0117 Adhered to on Reconsideration
Affirmed ~ Ineligible Weeks 32-21 through 35-21

PROCEDURAL HISTORY AND FINDINGS OF FACT: On September 15, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work during the weeks including August 8, 2021 through September 4, 2021 (weeks 32-21 through 35-21) and was therefore denied unemployment insurance benefits for those weeks (decision # 113040). Claimant filed a timely request for hearing. On October 29, 2021, ALJ Ramey conducted a hearing, and on November 4, 2021 issued Order No. 21-UI-179008, affirming decision # 113040. On November 24, 2021, Order No. 21-UI-179008 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On January 11, 2022, claimant filed a late application for review of Order No. 21-UI-179008 with EAB. On February 23, 2022, EAB issued Decision 2022-EAB-0117, allowing claimant's late application for review and affirming Order No. 21-UI-179008. On March 3, 2022, claimant filed a request for reconsideration of EAB Decision 2022-EAB-0117 with EAB. This decision is issued pursuant to EAB's authority under ORS 657.290(3).

CONCLUSIONS AND REASONS: Claimant's request for reconsideration is allowed. EAB Decision 2022-EAB-0117 is adhered to on reconsideration.

ORS 657.290(3) authorizes EAB to reconsider any previous decision of EAB, including "the making of a new decision to the extent necessary and appropriate for the correction of previous error of fact or law." "Any party may request reconsideration to correct an error of material fact or law, or to explain any unexplained inconsistency with Employment Department rule, or officially stated Employment Department position, or prior Employment Department practice." OAR 471-041-0145(1) (May 13, 2019). The request is subject to dismissal unless it includes a statement that a copy was provided to the other parties, and is filed on or before the 20th day after the decision sought to be reconsidered was mailed. OAR 471-041-0145(2).

EAB issued EAB Decision 2022-EAB-0117 on February 23, 2022. Claimant filed her request for reconsideration on March 3, 2022, less than 20 days after EAB Decision 2022-EAB-0117 was mailed. Claimant's request for reconsideration therefore was timely, and is allowed.

Claimant asserted in her request for reconsideration that she understood EAB Decision 2022-EAB-0117 to say that EAB did not consider her written argument in that proceeding, *in its totality*, because some of her written argument contained new evidence that was not part of the hearing record, and because she had not shown that factors or circumstances beyond her reasonable control prevented her from offering the information during the hearing. Request for Reconsideration at 1. Claimant requests that EAB therefore reconsider the written argument she submitted on February 11, 2022 regarding Order No. 21-UI-179008 to the extent it was based on the hearing record so as to prevent her from "los[ing] on a technicality." Request for Reconsideration at 1.

However, EAB *did* consider claimant's written argument in 2022-EAB-0117 to the extent it was based on the hearing record, and only excluded from consideration that information which had not previously been part of the hearing record.¹ This procedural approach was conveyed in EAB Decision 2022-EAB-0117 through the statement, "EAB did not consider *the new information* contained in claimant's February 11, 2022 written argument when reaching [EAB Decision 2022-EAB-0117]." EAB Decision 2022-EAB-0117 at 1. (Emphasis added). Therefore, because EAB did consider claimant's written argument to the extent it was based on the hearing record, claimant has not shown that EAB Decision 2022-EAB-0117 contained an error of material fact or law, or any inconsistency with Employment Department rule, officially stated Department position, or prior Employment Department Practice. For these reasons, EAB Decision 2022-EAB-0117 is adhered to on reconsideration.

DECISION: Claimant's request for reconsideration is allowed. On reconsideration, EAB Decision 2022-EAB-0117 is adhered to as clarified herein.

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

DATE of Service: April 14, 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.

¹ Order No. 21-UI-179008 found that claimant was not available for work during the weeks including August 8, 2021 through September 4, 2021 (weeks 32-21 through 35-21) because she spent the major portion of those weeks in Bulgaria, a country not included in the Compact of Free Association with the United States of America, and therefore was not available for work during any of those weeks per the express language of OAR 471-030-0036(i) (December 8, 2019). Order No. 21-UI-179008 at 4. Order No. 21-UI-179008 also stated, "there is currently no exception under the rule." Order No. 21-UI-179008 at 4. Claimant's written argument in 2022-EAB-0117 asked EAB to apply an exception in her case and allow her benefits, but did not point to the existence of any applicable exception under the rule. EAB Decision 2022-EAB-0117 Written Argument at 1-2. As such, EAB did not find that an exception was available to claimant.

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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 ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

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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