

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0191

Affirmed
Ineligible Weeks 45-21 through 01-22

PROCEDURAL HISTORY: On December 1, 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 November 7, 2021 through November 27, 2021 (weeks 45-21 through 47-21) and was therefore ineligible for benefits for those weeks and until the reason for denial had ended (decision # 111631). Claimant filed a timely request for hearing. On January 25, 2022, ALJ Micheletti conducted a hearing, and on January 27, 2022 issued Order No. 22-UI-184963, modifying decision # 111631 by concluding that claimant was not available for work during the weeks including November 7, 2021 through January 8, 2022 (weeks 45-21 through 01-22) and therefore ineligible for benefits for those weeks. On February 1, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) During the period relevant to this decision, Onemain General Services Corp. employed claimant as an assistant manager.

(2) On September 25, 2021, claimant's husband was hospitalized in Portland due to complications from COVID-19. Due to the serious nature of her husband's condition, which included being placed on a ventilator and given a 30% chance of survival, claimant needed to be at the hospital to provide emotional support for her husband and consent for his medical treatment. Claimant tried to continue working despite the need for her presence at the hospital, but she ultimately had to stop working. Claimant's last day working, prior to being placed on approved medical leave, was October 8, 2021.

(3) On October 18, 2021, the employer approved claimant's request for unpaid leave under the Family Medical Leave Act (FMLA). During her FMLA leave, claimant remained with her husband at the hospital for ten to twelve hours per day until his discharge, except for the one to two times per week that she would return to their home in Pendleton (four hours away) to provide transportation for their daughters.

(4) On November 9, 2021, claimant filed an initial claim for unemployment insurance benefits. Claimant claimed benefits for the weeks including November 7, 2021 through January 8, 2022 (weeks 45-21 through 01-22), the weeks at issue. The Department determined that claimant's occupation was office management and that the customary days and hours for such work were Monday through Friday, 8:00 a.m. to 5:00 p.m. The Department did not pay benefits for any of the weeks at issue.¹

(5) On December 31, 2021, claimant's husband was discharged from the hospital. Claimant assumed the role of primary care provider for her husband during his recovery. Claimant remained on FMLA leave until it expired on January 9, 2022, at which point the employer approved claimant for additional leave due to her husband's condition.

CONCLUSIONS AND REASONS: Claimant was not available for work during the weeks including November 7, 2021 through January 8, 2022 (weeks 45-21 through 01-22), and is not eligible to receive benefits for those weeks.

To be eligible to receive benefits, unemployed individuals must be available for work during each week claimed as defined by OAR 471-030-0036(3) (December 8, 2019); ORS 657.155(1)(c). However, during a state of emergency declared by the Governor under ORS 401.165, or a public health emergency declared under ORS 433.441, the Department may waive, otherwise limit, or modify the requirements of OAR 471-030-0036. OAR 471-030-0071 (effective September 13, 2020). Temporary OAR 471-030-0036(3) (September 26, 2021 through March 24, 2022) provides 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[.]

* * *

The record shows that claimant was not available for work during the weeks at issue. From September 15, 2021 until December 31, 2021, claimant spent ten to twelve hours per day at the Portland hospital location where her husband was being treated for complications due to COVID-19. Claimant's presence at the hospital, which was four hours away from her Pendleton home, was necessary during this period so that she could provide consent to his treatment, where needed, as well as emotional support. Likewise, after claimant's husband was discharged from the hospital on December 31, 2021, claimant's circumstances required her to provide continued care to her husband during his recovery through at least January 9, 2022. The record shows that the care claimant provided for her husband both during his stay in the hospital, and later at their home, placed demands on claimant's time that rendered her incapable of reporting for suitable work opportunities during the weeks at issue. As a result, the record shows that claimant was not available for work during the weeks at issue and therefore ineligible for benefits during those weeks.

¹ EAB has taken notice of this fact, which is contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). 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.

DECISION: Order No. 22-UI-184963 is affirmed.

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

DATE of Service: April 1, 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 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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