

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0271

Affirmed
Ineligible Weeks 41-21 through 04-22

PROCEDURAL HISTORY: On November 8, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work for the weeks including October 10, 2021 through October 30, 2021 (weeks 41-21 through 43-21) and was therefore not eligible to receive unemployment insurance benefits during those weeks and until the reason for the denial had ended (decision # 111419). Claimant filed a timely request for hearing. On February 7, 2022, ALJ McGorin conducted a hearing, and on February 9, 2022 issued Order No. 22-UI-186048, modifying¹ decision # 111419 by concluding that claimant was not available for work, and therefore ineligible to receive benefits, for the weeks including October 10, 2021 through January 29, 2022 (weeks 41-21 through 04-22). On February 23, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant's argument to the extent it was based on the record.

FINDINGS OF FACT: (1) On October 8, 2021, claimant began acting as her mother's full-time, live-in caregiver. Claimant's mother suffered from dementia and other debilitating medical conditions, and required full-time care. Claimant performed caregiving services for her mother every day of the week, from approximately 6 a.m. to 11 p.m. Therefore, claimant could not work a full time job while performing caregiving services for her mother. The only days of the week that claimant could work outside the home were Saturday and Sunday, as her two sons were able to watch claimant's mother during those days. Claimant's caregiving arrangement persisted through at least February 7, 2022.

¹ The order under review stated that "the administrative decision mailed November 8, 2021 is *affirmed*." Order No. 22-UI-186048 at 4 (emphasis added). However, as the order under review concluded that claimant's effective disqualification date was different than the date found in decision # 111419, the order *modified* the administrative decision.

(2) On October 12, 2021, claimant filed her initial claim for unemployment insurance benefits. Claimant subsequently claimed benefits for the weeks including October 10, 2021 through January 29, 2022 (weeks 41-21 through 04-22). These are the weeks at issue. The Department did not pay claimant benefits for the weeks at issue.

(3) During the weeks at issue, claimant sought work as a cashier. The Department determined that claimant's regular labor market for this type of work was Roseburg, Oregon, and that cashier work in that labor market was customarily performed from 5:00 a.m. to 9:00 p.m., Sunday through Saturday.

CONCLUSIONS AND REASONS: Claimant was not available for work during the weeks at issue.

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) provided that a person shall be considered available for work if, at a minimum, the individual is:

(a) Willing to work full time, part time, and accept temporary work opportunities, unless such part time or temporary opportunities would substantially interfere with return to the individual's regular employment; and

(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 weeks at issue, claimant was responsible for her mother's full-time care, 17 hours per day, every day of the week, though her sons were available to care for her mother on Saturdays and Sundays if necessary. Claimant was seeking work as a cashier during the week at issue, which the Department determined was customarily performed from 5:00 a.m. to 9:00 p.m., Sunday through Saturday, in claimant's labor market. Claimant's caregiving duties meant that she was only available to work during two of the seven days during which the work she sought was performed. It is also reasonable to infer from the record that, because claimant was only available for work on Saturdays and Sundays during the weeks at issue, she was not willing to work full time. Therefore, the record shows that claimant was not "available" for work, as that term is defined under OAR 471-030-0036(3), during the weeks at issue.

In her written argument, claimant asserted that she should be eligible for benefits because, prior to the weeks at issue, she quit her job in order to care for her mother; and suggested that she would qualify because, "due to the COVID restrictions in long term facilities," claimant was a worker who was "home to care for family member(s) due to the effects of COVID 19." Claimant's Written Argument at 1. In so asserting, claimant appears to rely upon an administrative rule that does not apply to either the issue or the time period in this case.

During a state of emergency declared by the Governor under ORS 401.165, the Department may waive, otherwise limit, or modify the requirements of OAR 471-030-0036. OAR 471-030-0071 (September 13, 2020). Paragraph (5) of Oregon Employment Department Temporary Rule for Unemployment Insurance Flexibility (March 8, 2020), <http://records.sos.state.or.us/ORSOSWebDrawer/Recordpdf/7604239> [hereinafter OED Temporary COVID-19 Rule], provided that a person will not be deemed unavailable for work because, in relevant part, they are home to care for a family member due to the effects of novel coronavirus. First, the record does not show that claimant's mother was suffering from the effects of COVID-19. Rather, claimant's mother was suffering from dementia. More importantly, however, the OED Temporary COVID-19 Rule was in effect from September 13, 2020 through September 25, 2021. Because the weeks at issue all occurred after the temporary rule was in effect, and because claimant's mother was not suffering from the effects of COVID-19, the rule does not apply to claimant's circumstances.

Claimant also cited to OAR 471-030-0036(4), which allowed claimants who were unable to work certain shifts due to the need to care for their children to still be considered available for work under certain circumstances. As claimant acknowledged in her written argument, the rule did not apply to individuals caring for "a parent who has a debilitating disease." Claimant's Written Argument at 1. EAB has no authority to read into the rule a provision which does not exist. Further, the provision that claimant cited was removed from the version of OAR 471-030-0036 in effect during the weeks at issue. See OAR 472-030-0036 (September 26, 2021 through March 24, 2022). Therefore, former OAR 471-030-0036(4) cannot render claimant eligible for benefits during the weeks at issue.

For the above reasons, claimant was not available for work during the weeks at issue, and therefore was not eligible for benefits during those weeks.

DECISION: Order No. 22-UI-186048 is affirmed.

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

DATE of Service: April 26, 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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