

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0275

Reversed
Eligible Weeks 35-21 through 39-21

PROCEDURAL HISTORY: On September 24, 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 29, 2021 through September 18, 2021 (weeks 35-21 through 37-21) and was therefore ineligible to receive unemployment insurance benefits during those weeks and until the reason for the denial had ended (decision # 134224).¹ Claimant filed a request for hearing. On February 2, 2022, ALJ Smith conducted a hearing, and on February 10, 2022 issued Order No. 22-UI-186139, modifying decision # 134224 by concluding that claimant was not available for work during the weeks including August 29, 2021 through October 2, 2021 (weeks 35-21 through 39-21) and was therefore ineligible to receive benefits during those weeks. On February 26, 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 August 21, 2021, claimant filed an initial claim for unemployment insurance benefits. Claimant subsequently claimed benefits for the weeks including August 29, 2021 through October 2, 2021 (weeks 35-21 through 39-21). These are the weeks at issue. The Department did not pay claimant benefits for the weeks at issue.

(2) Prior to the weeks at issue, claimant had worked in an administrative role in the medical field, but separated from employment because she was unwilling to become vaccinated against COVID-19 due to

¹ Decision # 134224 erroneously stated that claimant was ineligible to receive benefits during the weeks including *September* 29, 2021 through September 18, 2021. At hearing, the Department's witness clarified the Department's position by explaining that the denial was intended to begin on *August* 29, 2021. Transcript at 5.

her religious beliefs. Claimant remained unwilling to become vaccinated against COVID-19 during the weeks at issue.

(3) During the weeks at issue, claimant primarily sought employment in medical office administration, such as reception and scheduling work. Claimant also sought work as a caregiver, for which she also had prior experience. The Department determined that claimant's labor market for these types of work was Eugene and Springfield, Oregon. Additionally, the Department determined that "the vast majority" of employers in the medical field were requiring that their employees either become vaccinated against COVID-19, or else obtain a waiver from vaccination on religious or medical grounds; and that employees who were granted waivers were "being put on a leave and still not allowed to work[.]" Transcript at 15. Claimant intended to seek a religious exception from vaccination if she was hired by an employer who required her to do so.

(4) In October 2021, claimant began working for an employer in the "dental field." Transcript at 22. The employer granted claimant an exception from vaccination.

CONCLUSIONS AND REASONS: Claimant was available for work during the weeks at issue.

The order under review concluded that claimant was not available for work during the weeks at issue because her religious objection to vaccination against COVID-19, while looking for work in a field that broadly expected employees to be vaccinated, "constituted an imposition of a condition that substantially reduced the opportunities for her to return to work with respect to the types of work that she was seeking at the earliest possible time." Order No. 22-UI-186139 at 2. The record does not support this conclusion.

Eligibility during weeks 35-21 through 38-21. For an individual to be considered "available for work" for purposes of ORS 657.155(1)(c), they must be:

(a) Willing to work full time, part time, and accept temporary work opportunities, during all of the usual hours and days of the week customary for the work being sought, 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 any suitable work opportunities within the labor market in which work is being sought, including temporary and part time opportunities; and

(c) Not imposing conditions which substantially reduce the individual's opportunities to return to work at the earliest possible time[.]

* * *

Former OAR 471-030-0036(3) (effective December 8, 2019 through August 1, 2020 and December 27, 2020 through September 25, 2021).

OAR 333-019-1010² governed the duties of healthcare employers in regards to COVID-19 vaccination requirements. In pertinent part, the rule forbade healthcare providers or staff from working in healthcare settings unless they were fully vaccinated or had provided documentation of a medical or religious exception by October 18, 2021. All of the weeks at issue in this matter concluded before the rule's deadline of October 18, 2021. As such, none of the employers claimant applied to work for during the weeks at issue were required by law to ensure that their employees were either vaccinated, or had documentation of an exception from vaccination, at the time that claimant applied to work for them. Because the vaccination mandate was not in effect at that time, and claimant was therefore not actually required to be vaccinated during the weeks at issue, claimant was capable of accepting and reporting for any suitable work opportunities during these weeks.

The order under review premised its conclusion that claimant had imposed a condition that substantially reduced her opportunities to return to work at the earliest possible time upon the Department's testimony that the "vast majority" of employers in that field would require claimant to be vaccinated. Order No. 22-UI-186139 at 2. Although it is possible that claimant's objection to vaccination reduced her opportunities to return to work at the earliest possible time, the record nevertheless shows that claimant was hired in October 2021—after only five weeks of claiming benefits—by an employer who permitted her to remain unvaccinated. Thus, given the relative ease with which claimant found work despite her vaccination objection, the record does not show that claimant's objection *substantially* reduced her opportunity to return to work at the earliest possible time.

Eligibility during weeks 39-21. 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[.]

* * *

The temporary amendments made to OAR 471-030-0036, effective September 26, 2021, removed the requirement that individuals not impose conditions which substantially reduce their opportunities to return to work at the earliest possible time. As discussed above, the record does not show that the condition that claimant imposed—refusing vaccination against COVID-19—substantially reduced her opportunities to return to work at the earliest possible time. Even if the

² This administrative rule, first temporarily adopted on August 5, 2021, was amended several times after its initial adoption. For purposes of this decision, all citations to the rule refer to the version of the rule which was adopted on September 1, 2021 and effective through January 31, 2022.

record did so show, however, such a finding would not be a bar to eligibility for week 39-21 because the requirement no longer applied.

For the above reasons, claimant was available for work during the weeks at issue, and was therefore eligible for unemployment insurance benefits during those weeks.

DECISION: Order No. 22-UI-186139 is set aside, as outlined above.

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

DATE of Service: May 2, 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.

NOTE: This decision reverses an order that denied benefits. Please note that payment of benefits, if any are owed, may take approximately a week for the Department to complete.

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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 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 الإستئناف 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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