

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0278

Modified
Ineligible Weeks 52-21 Through 02-22, Eligible Weeks 03-22 Through 07-22

Modificada
No Elegible Desde la Semana 52-21 Hasta la Semana 02-22,
Elegible la Semana 03-22 Hasta la Semana 07-22

PROCEDURAL HISTORY: On January 19, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work and therefore not eligible for unemployment insurance benefits for the weeks from December 26, 2021 through January 15, 2022 (weeks 52-21 through 02-22) and until the reason for the denial had ended (decision # 132019). Claimant filed a timely request for hearing. On February 22, 2022, ALJ Murdock conducted a hearing interpreted in Spanish, and on February 24, 2022 issued Order No. 22-UI-187148, modifying decision # 132019 by concluding that claimant was not available for work and therefore not eligible for benefits for the weeks from December 26, 2021 through February 19, 2022 (weeks 52-21 through 07-22). On February 28, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

HISTORIA PROCESAL: *El 19 de enero de 2022, el Departamento de Empleo de Oregon (el Departamento) envi6 notificaci6n de una decisi6n administrativa concluyendo que el reclamante no estaba disponible para trabajar o elegible para recibir beneficios de desempleo desde el 26 de diciembre de 2021 hasta el 15 de enero de 2022 (decisi6n # 132019). El reclamante sometio una aplicaci6n oportuna para una audiencia. El 22 de febrero de 2022, la jueza administrativa Murdock llev6 a cabo una audiencia que fue interpretada al espa6ol, y el 24 de febrero de 2022, emiti6 la Orden Judicial No. 22-UI-187148, modificando la decisi6n # 132019 y concluyendo que el reclamante no estaba disponible para trabajar o elegible para recibir beneficios desde el 26 de diciembre de 2021 hasta el 19 de febrero de 2022. El 28 de febrero de 2022, el reclamante present6 una aplicaci6n para revisi6n de la orden judicial a La Junta de Apelaciones de Empleo (EAB).*

FINDINGS OF FACT: (1) Claimant claimed benefits for the weeks from December 26, 2021 through February 19, 2022 (weeks 52-21 through 07-22), the weeks at issue. The Department did not pay claimant benefits for the weeks at issue.

(2) Claimant customarily worked as a chef, and sought the same type of work during the weeks at issue. In claimant's labor market, chef work was customarily performed all days of the week, in day shifts from 6:00 a.m. to 4:00 p.m., and night shifts from 4:00 p.m. until midnight or 1:00 a.m.

(3) Claimant was the single parent of four children of ages eleven and younger. During all of the weeks at issue, claimant was not willing to work night shifts or on Saturdays because he took care of his children during that time. Claimant took his children to therapy appointments mid-day every Saturday.

(4) From December 26, 2021 until January 14, 2022, claimant had childcare for his children Monday through Friday, from 8:00 a.m. until 3:00 p.m., and on Sundays.

(5) Beginning on January 17, 2022, claimant was willing to work any hours from 6:00 a.m. to 4:00 p.m. from Monday through Friday. Claimant learned from his social worker that he could obtain childcare "very quickly" if he had work, and that the childcare provider could care for his children before and after school, including all hours from 6:00 a.m. until 4:00 p.m. Transcript at 15. If claimant had work, claimant's neighbors were willing to care for claimant's children between 6:00 a.m. and 4:00 p.m. until he obtained a childcare provider through his social worker.

CONCLUSIONS AND REASONS: Claimant was not available for work from December 26, 2021 through January 15, 2022 (weeks 52-21 through 02-22). Claimant was available for work from January 16, 2022 through February 19, 2022 (weeks 03-22 through 07-22).

CONCLUSIONES Y RAZONES: *El reclamante no estaba disponible para trabajar durante las semanas desde el 26 de diciembre de 2021 hasta el 15 de enero de 2022 (la semana 52-21 hasta la semana 02-22). El reclamante estaba disponible para trabajar durante las semanas desde el 16 de enero de 2022 hasta el 19 de febrero de 2022 (la semana 03-22 hasta la semana 07-22).*

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:

(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; and

(c) If the department determines suitable work in the individual's customary occupation is performed:

* * *

(B) During more than one shift, the individual must be available to work at least one shift during the week; and

(d) Physically present in the normal labor market area as defined by section (5) of this rule, every day of the week [.]

* * *

(g) For the purposes of [section (3)] of this rule, shift means the normally scheduled hours of the week in which work is performed by an employee during a full-time schedule of hours. Shifts or shiftwork may take various forms, such as day shift, swing shift, night shift, split-shift, and 24-hour shifts. Shifts are typically 5 days per week but can vary based on the occupation and labor market. The Employment Department shall define the customary days and hours the occupation is performed within the labor market of the individual.

* * *

Claimant has the burden for all of the weeks at issue to show that the Department should have paid benefits. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976) (where the Department has paid benefits, it has the burden to prove benefits should not have been paid; by logical extension of that principle, where benefits have not been, paid claimant has the burden to prove that the Department should have paid benefits).

The order under review determined that claimant was ineligible to receive benefits during all of the weeks at issue because chef work in claimant's labor market was performed all days of the week during day and night shifts, that claimant was not available to work the full day shift on Saturdays, and that to be available for work claimant had to be willing to work the day shift on all of the days that chef work was performed in his labor market, including Saturdays. Order No. 22-UI-187148 at 2, 4. In so concluding, the order under review applied a provision of OAR 471-030-0036(4) (effective December 8, 2019 through August 1, 2020, and December 27, 2020 through September 25, 2021), regarding a parent not willing to work a particular shift due to childcare obligations. Order No. 22-UI-187148 at 4. However, that version of OAR 471-030-0036 was not in effect during the weeks at issue and therefore did not apply to claimant's circumstances. As such, the record does not support the conclusion that claimant was ineligible to receive benefits during weeks 03-22 through 07-22.

Ineligible Weeks 52-21 Through 02-22. The record shows that claimant was not available to work during the weeks from December 26, 2021 through January 15, 2022. The record shows that the shifts for chef work included a day shift—which could encompass any hours between 6:00 a.m. and 4:00 p.m., Sunday through Saturday—as well as a night shift. Claimant was not available to work a night shift because he cared for his children during that time. However, because the record shows that claimant's customary occupation as a chef was performed during more than one shift, claimant could still be considered available for work if he were available during at least one shift. *See* Temporary OAR 471-030-0036(3)(c)(B) (September 26, 2021 through March 24, 2022). The record shows that claimant was

only available from 8:00 a.m. until 3:00 p.m. until the end of week 02-22. Thus, because claimant did not have childcare for all of the hours in a chef's day shift, he was not available for even one full shift as a chef. Claimant was therefore not available for work during weeks 52-21 through 02-22, and was not eligible to receive benefits during those weeks.

Eligible Weeks 03-22 Through 07-22. The record shows that claimant was available to work during weeks 03-22 through 07-22 because he had childcare available for his children for the full day shift all days but Saturday. Although claimant was not available to work on Saturdays, a "shift" is "typically 5 days per week." Temporary OAR 471-030-0036(3)(g) (September 26, 2021 through March 24, 2022). Claimant was available for the full day shift for six days per week, Sunday through Friday, and therefore was available to work at least one shift during weeks 03-22 through 07-22. Claimant therefore was eligible to receive benefits for those weeks.

DECISION: Order No. 22-UI-187148 is modified, as outlined above. *La Orden de la Audiencia 22-UI-187148 se modifica, de acuerdo a lo indicado arriba.*

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

DATE of Service: May 13, 2022

NOTE: This decision modifies 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.

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.surveygizmo.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.

NOTA: *Usted puede apelar esta decisión presentando una solicitud de revisión judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) dentro de los 30 días siguientes a la fecha de notificación indicada arriba. Vea ORS 657.282. Para obtener formularios e información, puede escribir a la Corte de Apelaciones de Oregon, Sección de Registros (Oregon Court of Appeals/Records Section), 1163 State Street, Salem, Oregon 97310 o visite el sitio web en courts.oregon.gov. En este sitio web, hay información disponible en español.*

Por favor, ayúdenos mejorar nuestros servicios completando un formulario de encuesta sobre nuestro servicio de atención al cliente. *Para llenar este formulario, puede visitar <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. Puede acceder a la*

encuesta usando una computadora, tableta, o teléfono inteligente. Si no puede llenar el formulario sobre el internet, puede comunicarse con nuestra oficina para una copia impresa de la encuesta.



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.

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