

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0377

Affirmed
Ineligible Weeks 40-21 and 41-21

PROCEDURAL HISTORY: On November 4, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work during the weeks from October 3, 2021 through October 16, 2021 (weeks 40-21 and 41-21) and therefore was ineligible for unemployment insurance benefits for those weeks (decision # 123959). Claimant filed a timely request for hearing. On March 1, 2022, ALJ Wardlow conducted a hearing, and on March 3, 2022 issued Order No. 22-UI-187732, affirming decision # 123959. On March 16, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant's written argument when reaching this decision.

FINDINGS OF FACT: (1) Claimant was an electrician who had a home in Arkansas, but travelled for work throughout the United States while living out of his motorhome.

(2) Prior to September 30, 2021, claimant gave a notice of resignation to his employer in Oregon because he had "tentatively accepted" work with a new employer in New York. Transcript at 8. Claimant did not have a start date with the New York employer and understood that "there was gonna be a lotta paperwork" to complete before he received one. Transcript at 9. Claimant decided to return to Arkansas to complete the paperwork and wait for the start date.

(3) On September 30, 2021 claimant filed an initial claim for unemployment insurance benefits. The Department determined that claimant's regular labor market was Faulkner County, Arkansas, and that electrician work in that labor market was customarily performed from 7:00 a.m. to 6:00 p.m., Monday through Friday.

(4) From October 5, 2021 to October 17, 2021, Claimant travelled from Oregon to Arkansas. Claimant did not search for work during this time period because he anticipated working for the New York employer once the paperwork was completed and he received his start date.

(5) Claimant claimed benefits for the weeks including October 3, 2021 through October 16, 2021 (weeks 40-21 and 41-21). These are the weeks at issue. The Department did not pay claimant benefits for the weeks at issue.

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

To be eligible to receive benefits, unemployed individuals must be able to work, available for work, and actively seek work during each week claimed. ORS 657.155(1)(c). With respect to the available for work requirement, ORS 657.155(2) provides, in relevant part:

(a) An individual who leaves the individual’s normal labor market area for the major portion of any week is presumed to be unavailable for work within the meaning of this section.

(b) The presumption described in paragraph (a) of this subsection may be overcome if the individual establishes to the satisfaction of the director that the individual:

(A) Has conducted a bona fide search for work and has been reasonably accessible to suitable work in the labor market area in which the individual spent the major portion of the week to which the presumption applies; or

(B) Was required to be outside the individual’s normal labor market area to apply for suitable employment within the individual’s normal labor market.

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:

* * *

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

(A) The individual is actively seeking work outside their normal labor market area; or

(B) The individual is infrequently absent from the labor market area for reasons unrelated to work search, for less than half of the week, and no opportunity to work or referral to work was missed by such absence.

* * *

Temporary OAR 471-030-0036(5)(a) provides, in relevant part, that “[a]n individual’s normal labor market shall be the geographic area surrounding the individual’s permanent residence within which employees in similar circumstances are generally willing to commute to seek and accept the same type of work at a comparable wage. The geographic area shall be defined by the Employment Department”

With few exceptions that do not apply here, to be actively seeking work as required under ORS 657.155(1)(c), an individual “must conduct at least five work-seeking activities per week,” with two of the five work-seeking activities being direct contact with an employer who might hire the individual. Temporary OAR 471-030-0036(4)(a) (September 26, 2021 through March 24, 2022). “Direct contact” means “making contact with an employer . . . to inquire about a job opening or applying for job openings in the manner required by the hiring employer.” Temporary OAR 471-030-0036(4)(a)(B).

Because the Department did not pay claimant benefits for the weeks at issue, it was claimant’s burden to show that he was eligible for benefits for those weeks. *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).

Claimant’s normal labor market area was Faulkner County, Arkansas. Claimant was travelling from Oregon to Arkansas for the major portion of week 40-21 and for all of week 41-21. Therefore, claimant was not physically present in his normal labor market during the weeks at issue and is presumed to have been unavailable for work during those weeks.

The record shows that while travelling during the weeks at issue claimant did not conduct a bona fide search for work, nor was he otherwise actively seeking work, because he had “tentatively accepted” new employment in New York and believed that once the paperwork for his new job was completed he would receive a start date. As such, claimant has failed to overcome the presumption that he was unavailable for work during weeks 40-21 and 41-21. Likewise, because the record shows that claimant did not look for work during the weeks at issue and is otherwise without any evidence suggesting that he conducted any work-seeking activities, claimant failed to show that he actively sought work for purposes of Temporary OAR 471-030-0036(4)(a) during the weeks at issue. For these reasons, claimant is not eligible for benefits for the weeks at issue.

DECISION: Order No. 22-UI-187732 is affirmed.

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

DATE of Service: June 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 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 ໄດ້ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

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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