

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0418

Affirmed
Late Request for Hearing Allowed
Ineligible Weeks 32-21 through 35-21

PROCEDURAL HISTORY: On August 27, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant failed to register for work in accordance with the Department's rules and therefore was ineligible to receive unemployment insurance benefits for the week of August 8, 2021 through August 14, 2021 (week 32-21) and until the reason for the denial had ended. On September 16, 2021, the August 27, 2021 administrative decision became final without claimant having filed a request for hearing. On September 17, 2021 claimant filed a late request for hearing on the August 27, 2021 administrative decision. ALJ Kangas considered claimant's request, and on November 2, 2021 issued Order No. 21-UI-178729, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by November 16, 2021. On November 19, 2021, claimant filed a late response to the appellant questionnaire and a timely application for review with the Employment Appeals Board (EAB). On January 31, 2022, ALJ Kangas mailed a letter to claimant stating that because claimant's response to the appellant questionnaire was late, OAH would not consider it or issue another order, and that Order No. 21-UI-178729 remained in effect.

On February 11, 2022, EAB issued EAB Decision 2022-EAB-0213, reversing Order No. 21-UI-178729 and remanding the matter for further development of the record to determine whether claimant had good cause to file the late request for hearing on the August 27, 2021 administrative decision and, if so, to determine the merits of that administrative decision. On March 7, 2022, ALJ Mott conducted a hearing, and on March 8, 2022 issued Order No. 22-UI-188107, concluding that claimant had good cause to file the late request for hearing on the August 27, 2021 administrative decision, and modifying that decision by concluding that claimant failed to register for work in accordance with the Department's rules and was therefore ineligible to receive benefits for the weeks including August 8, 2021 through September 4, 2021 (weeks 32-21 through 35-21). On March 28, 2022, claimant filed a timely application for review of Order No. 22-UI-188107 with EAB.

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

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the portion of the order under review concluding that claimant had good cause to file the late request for hearing on the August 27, 2021 administrative decision is **adopted**. The remainder of this decision addresses claimant's eligibility for benefits during weeks 32-21 through 35-21.

FINDINGS OF FACT: (1) On April 23, 2021, claimant filed an initial claim for unemployment insurance benefits. The Department established claimant's weekly benefit amount as \$673.00.

(2) Between July 26, 2021 and July 30, 2021, the Department mailed a letter to claimant which instructed her to visit the iMatchSkills website and complete two portions of her iMatchSkills registration: (1) basic information and (2) job seeker profile. The letter, which was mailed to claimant's correct mailing address, instructed her to complete these steps by August 14, 2021.

(3) Claimant claimed benefits for the weeks including August 8, 2021 through September 4, 2021 (weeks 32-21 through 35-21). These are the weeks at issue. The Department did not pay claimant benefits for the weeks at issue.

(4) Claimant received the Department's letter. However, claimant did not believe that she was required to register because she believed that she qualified for an exception from registration, and therefore did not complete any part of the registration process prior to the weeks at issue.

(5) During the weeks at issue, claimant worked for two employers: a news organization and a hotel. During week 32-21, claimant worked 38 hours and earned \$739.20. During week 33-21, claimant worked 38 hours and earned \$739.00. During week 34-21, claimant worked 34 hours and earned \$690.00. During week 35-21, claimant worked 44 hours and earned \$854.00. During each of the weeks at issue, claimant worked approximately 15 hours for the hotel, and the remainder for the news organization.

(6) Prior to the weeks at issue, the hotel had reduced claimant's hours. The hotel had also reduced some of their other employees' hours and "had let go of a lot of people over time," but did not lay off a large portion of their workforce simultaneously. Transcript at 41. Claimant expected the hotel to increase her hours by the end of September 2021.

(7) As an employee of the news organization, claimant was represented by Service Employees International Union (SEIU). Claimant was not represented by a union as an employee of the hotel employer.

CONCLUSIONS AND REASONS: Claimant failed to register for work in accordance with the Department's rules, and is therefore ineligible for benefits for those weeks.

ORS 657.155(1)(a) states that an individual shall only be eligible to receive benefits with respect to any week if "[t]he individual has registered for work at and thereafter has continued to report at an employment office in accordance with" the Department's rules. ORS 657.159 states that to satisfy the registration requirement of ORS 657.155(1) an individual shall submit such information regarding the individual's job qualifications, training and experience as the Department requests.

OAR 471-030-0035 (January 11, 2018) provides, in part:

(1) A claimant may fulfill the “registered for work” requirements of ORS 657.155(l)(a) by completion of such processes as directed by the Director in order to create a full registration for work.

(2) “Full registration for work” as used in this rule, means providing information regarding the individual's job qualifications, skills, training and experience as the Director or an authorized representative of the Director deems necessary to carry out job placement services for the individual.

* * *

OAR 471-020-0020(l)(a) (August 8, 2004) provides, in relevant part, that except for individuals identified in OAR 471-020-0021 (January 8, 2006), all unemployment insurance claimants shall submit such information as may be required by the Oregon Employment Department to carry out job placement services for the individual including, but not limited to, the individual's job qualifications, training and experience. Such information shall be entered into the Business & Employment Services online job match system concurrent with, or as soon as possible following, the filing of an initial claim for unemployment insurance benefits. Entry of this information shall constitute enrollment.

OAR 471-020-0021 provides that the following unemployment insurance claimants are not required to submit registration information to the Employment Department for job placement purposes:

- (1) Individuals claiming benefits as interstate liable claimants against the State of Oregon;
- (2) Individuals on a temporary mass layoff from a single employer.
- (3) Individuals claiming benefits through an approved shared work plan under the provisions of ORS 657.380;
- (4) Individuals claiming benefits for partial unemployment under the provisions of OAR 471-030-0060; and
- (5) Individuals who are members in good standing of a union that does not allow members to seek non-union work.

OAR 471-030-0060(1) (January 11, 2018) provides that a partially unemployed individual is one who:

- (a) Has been working full time and remains attached to their usual and regular employer; and
- (b) Now works some but less than their customary full time hours for such employer because of a lack of full time work;
- (c) Has earnings less than their weekly benefit amount; and

(d) Expects to return to full time work for such employer.

Former OAR 471-030-0036(5) (August 1, 2020 through September 25, 2021) provided, in relevant part, that:

(b) For an individual who is temporarily unemployed:

* * *

(B) There is a reasonable expectation that they will be returning to work for their regular employer. The work the individual is returning to must be full time or pay an amount that equals or exceeds their weekly benefit amount;

(C) The department will not consider the individual to be temporarily unemployed if they were separated from their employer for reasons other than a lack of work, the work the individual is returning to is not with their most recent employer, or the length the individual is unemployed is longer than the period described in subsection (D) of this section; and

(D) The department will consider that the period for which an individual is temporarily unemployed:

(i) Begins the last date the individual performed services for the employer. In the case of an individual still working for the employer, it is the last date worked during the week in which the individual had earnings less than their weekly benefit amount; and

(ii) Cannot be greater than four weeks between the week the individual became temporarily unemployed and the week the individual returns to work as described in subsection (B) of this section.

The Department denied claimant payment of benefits because she did not complete her iMatchSkills registration prior to the deadline of August 14, 2021. Claimant testified that although she received the letter advising her to complete her iMatchSkills registration, she believed that she did not need to register because she believed that she qualified for one or more of the exceptions to the registration requirement, including being on a “temporary layoff.” Transcript at 32. However, none of the registration requirements exceptions, as outlined in OAR 471-020-0021, apply to claimant’s circumstances.

Claimant was not a “partially unemployed individual” as that term is defined under OAR 471-030-0060(1) because, among other things, an individual must have earnings less than their weekly benefit amount to be considered “partially unemployed” during a particular week. For each of the weeks at issue, claimant earned more than her weekly benefit amount of \$673.00. Nor was claimant on a temporary mass layoff from a single employer, as she testified that while the hotel employer had reduced her hours, they did not lay off a large portion of their workforce simultaneously. It is also reasonable to infer from the record that claimant was not a member of a union that did not allow its

members to seek non-union work, as claimant worked a non-union job at the same time that she worked the union job. The record does not contain any indication that claimant was either claiming benefits through an interstate unemployment claim, or that she was claiming benefits through an approved work share plan. Thus, claimant did not qualify for any of the exceptions to registration under OAR 471-020-0021.

Finally, while claimant's testimony and written argument suggest that claimant believed that she was not required to register for iMatchSkills because she was temporarily unemployed (as that term is defined by *former* OAR 471-030-0036(5)(b)), claimant did not establish that a person's status as a temporarily unemployed individual is a basis for exempting them from the registration requirement. First, the applicable administrative rules above, including OAR 471-020-0021, do not exempt temporarily unemployed individuals from registration unless they are on a temporary mass layoff. As discussed above, the record does not show that claimant was on a temporary mass layoff. With her written argument, claimant included a screen capture of a page from the Department's website, titled "I am temporarily laid off. Do the work search requirements apply to me?" Claimant's Written Argument at 4. As the copy of the screen capture was largely illegible, it is not possible to discern the full contents of that web page. However, even if the page did indicate that the Department was not requiring temporarily unemployed individuals to register for work, the record does not show that claimant met the definition of "temporarily unemployed" during the weeks at issue.

Under *former* OAR 471-030-0036(5)(b)(D)(i), in the case of individuals who are still working for their employer, the period in which an individual is considered to have become temporarily unemployed is the last date worked during the week in which the individual had earnings less than their weekly benefit amount. Here, claimant continued working for the news organization and hotel during the weeks at issue and thus was an individual who was still working for their employer. Further, during each of the weeks at issue, claimant had earnings in excess of her weekly benefit amount. Therefore, the record does not show that claimant was ever temporarily unemployed during the weeks at issue.

In sum, claimant did not qualify for any of the exceptions to the registration requirement, and was not temporarily unemployed during the weeks at issue. Because claimant failed to register for work in accordance with the Department's rules, she was not eligible for benefits during those weeks.

DECISION: Order No. 22-UI-188107 is affirmed.

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

DATE of Service: June 15, 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 ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

Arabic

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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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