

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0427

Affirmed
Ineligible Weeks 03-22 through 05-22

PROCEDURAL HISTORY: On February 18, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant failed to actively seek work for the weeks including January 16, 2022 through February 5, 2022 (weeks 03-22 through 05-22) and was therefore not eligible to receive unemployment insurance benefits for those weeks (decision # 135744). Claimant filed a timely request for hearing. On March 22, 2022, ALJ Murdock conducted a hearing, and on March 24, 2022 issued Order No. 22-UI-189613, affirming decision # 135744. On April 1, 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 him 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) During the period of January 16, 2022 through February 5, 2022, claimant did not have a job and sought work by "just look[ing] through the [news]paper" and "sen[ding] out some resumes, stuff like that." Transcript at 11-12.

(2) On February 9, 2022, claimant filed an initial claim for unemployment insurance benefits by telephone with the assistance of a Department representative. During the call, claimant also claimed benefits for the weeks including January 16, 2022 through February 5, 2022 (weeks 03-22 through 05-22). These are the weeks at issue. The Department did not pay claimant benefits for the weeks at issue.

(3) At the time claimant claimed the weeks at issue, claimant did not provide his work search history for any of the weeks.

(4) On February 10, 2022, the Department mailed a letter to claimant requesting that he provide his work search history for the weeks at issue.

(5) On or about February 14, 2022 claimant was hired by an employer and began working at his new job. At some point after he began the new job, claimant received the letter requesting his work search information for the weeks at issue. Claimant failed to provide any information in response to the letter because did not think he needed to provide the work search history since he had gotten a new job.

CONCLUSIONS AND REASONS: Claimant failed to actively seek work during the weeks at issue, and was therefore ineligible to receive unemployment insurance benefits for those weeks.

To be eligible to receive benefits, unemployed individuals must actively seek work during each week claimed. ORS 657.155(1)(c). 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. *Former 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.” *Former OAR 471-030-0036(4)(a)(B)*.

Claimant did not receive benefits for the weeks at issue and, therefore, claimant had the burden to prove that he should have been paid 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 failed to meet his burden to prove that he actively sought work during the weeks at issue. The record shows that claimant had ample opportunity to provide his work search history for the weeks at issue, including at the hearing in this case, but failed to do so. Transcript at 11-15. Claimant claimed the weeks at issue on February 9, 2022 but did not provide his work search history at that time. At hearing, claimant testified that at some point after February 9, 2022, he provided his work search history online but the system required him to call in to complete the process, which he stated that he did. Transcript at 15, 18. However, the Department had no record of claimant providing his work search history for the weeks at issue in any format, online or otherwise. Transcript at 5, 15. The record shows that the Department requested the work search history in a letter dated February 10, 2022, but claimant thought he did not need to provide the information for the weeks at issue, because by the time he received the letter he had started a new job. The fact that claimant started a new job on or about February 14, 2022 had no bearing on claimant’s obligation to establish that he actively sought work for the weeks at issue, the period of January 16, 2022 through February 5, 2022, each of which occurred when claimant did not have a job.

Moreover, claimant was afforded an opportunity at hearing to provide his work search history for the weeks at issue. Transcript at 11-12. Claimant testified generally that he sought work by “just look[ing] through the [news]paper” and “sen[d] out some resumes, stuff like that.” Transcript at 11-12. However, when asked for specifics and given time to review his records during the hearing, claimant was unable to provide any details regarding work seeking activities that he performed, or direct contacts

that he made with employers, during the weeks at issue.¹ Transcript at 13-15. Because claimant did not provide this information at any point, claimant did not meet his burden to prove he actively sought work during the weeks at issue.

Accordingly, Claimant failed to actively seek work during each of weeks 03-22 through 05-22, and was not eligible to receive benefits for those weeks.

DECISION: Order No. 22-UI-189613 is affirmed.

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

DATE of Service: June 16, 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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¹ The Notice of Hearing that scheduled the March 22, 2022 hearing in this case, which claimant testified he had read and was holding in his hand during the hearing, put claimant on notice to be prepared to provide his work search history at hearing. Transcript at 18-19. Specifically, the Notice of Hearing stated, “Claimant’s work search evidence for all weeks at issue may be required at the hearing. Be prepared with that information.” Transcript at 19.



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 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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