

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0814

Affirmed
Ineligible

PROCEDURAL HISTORY: On April 13, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work from February 27, 2022 through March 26, 2022 (weeks 09-22 through 12-22) and was not eligible for unemployment insurance benefits for those weeks and until the reason for the denial had ended (decision # 124416). Claimant filed a timely request for hearing. On June 24, 2022, ALJ Lucas conducted a hearing, and on July 1, 2022 issued Order No. 22-UI-197381, affirming decision # 124416. On July 21, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Providence Health employed claimant as a medical receptionist. Claimant was the legal guardian of her grandchild. On or about February 26, 2022, claimant took a leave of absence from the employer to care for her grandchild.

(2) On February 26, 2022, claimant filed an initial claim for unemployment insurance benefits. When claimant filed her initial claim, she spoke with a Department representative. Claimant informed the representative that she was beginning a leave of absence to care for her grandchild and planned to claim benefits during her leave.

(3) Claimant claimed benefits for the weeks from February 27, 2022 through March 26, 2022 (weeks 09-22 through 12-22). These are the weeks at issue.

(4) Claimant sought medical receptionist work during the weeks at issue. Claimant's labor market area was the Oregon City, Gladstone, Milwaukie, and Southeast Portland, Oregon area. Medical receptionist work was customarily performed in claimant's labor market area during only one shift, from approximately 8:00 a.m. to 5:00 p.m., Monday through Friday. During the weeks at issue, claimant could not work Monday through Friday from 8:00 a.m. to 5:00 p.m. due to having to provide care for her grandchild. Claimant also was not willing to work full time during the weeks at issue due to having to provide care for her grandchild.

(5) The Department paid claimant benefits for the weeks at issue. The payment of benefits for the weeks at issue was due to an agency error.

CONCLUSIONS AND REASONS: Claimant was not available for work during the weeks from February 27, 2022 through March 26, 2022 (weeks 09-22 through 12-22) and was ineligible for unemployment insurance benefits for those weeks.

Under ORS 657.155(1)(c), 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). 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, in pertinent part, 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

* * *

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

(A) During only one shift in their labor market, the individual must be available to work during the days and hours for that work, except the individual may seek other types of suitable work that are normally performed more than one shift in their labor market, and for which they are capable of performing by virtue of experience or training, so long as they are available for at least one shift[.]

During the weeks at issue, claimant was not willing to work full time due to having to take care of her grandchild during her leave of absence. Further, the Department determined that suitable work in claimant's receptionist occupation was performed during only one shift, 8:00 a.m. to 5:00 p.m., Monday through Friday. Thus, per Temporary OAR 471-030-0036(3)(c)(A) above, to be available for work, claimant was required to be available to work the days and hours of the receptionist work because the record does not show that claimant sought work other than receptionist work that are normally performed more than one shift. Claimant could not work 8:00 a.m. to 5:00 p.m., Monday through Friday during the weeks at issue because she was taking care of her grandchild. For these reasons, under Temporary OAR 471-030-0036(3) claimant was not available for work during the weeks at issue.

Because the weeks at issue in this case extend to March 26, 2022 while Temporary OAR 471-030-0036 was effective only through March 24, 2022, it is also necessary to apply to this case the version of OAR 471-030-0036 that replaced the temporary rule. Under the version of the rule that replaced the temporary rule, 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[.]

OAR 471-030-0036(3) (March 25, 2022). However, OAR 471-030-0036(4) provides, in pertinent part, that:

Notwithstanding the provisions of OAR 471-030-0036(3), an individual with a circumstance which restricts their availability such as . . . caring for an immediate family member . . . will not be deemed unavailable for work if:

(a) The work the individual is seeking or is otherwise willing to seek is customarily performed during other days and hours in the individual's normal labor market area as defined by OAR 471-030-0036(6); and

(b) The individual is willing and capable of working full time during other days and hours for which they could reasonably expect employers to schedule them.

Here, as with the temporary rule, claimant was not available for work because she was not willing to work full time during the weeks at issue due to having to take care of her grandchild during her leave of absence. Moreover, claimant is not deemed available for work pursuant to OAR 471-030-0036(4). Although claimant's caregiving responsibilities to her grandchild restricted her availability, the record shows that the receptionist work claimant sought was not customarily performed during days and hours other than the 8:00 a.m. to 5:00 p.m., Monday through Friday shift. Claimant was unavailable for those hours due to having to take care of her grandchild. For these reasons, claimant was also not available for work during the weeks at issue under the version of OAR 471-030-0036 that replaced the temporary rule.

The Department paid claimant benefits for the weeks at issue. As noted by the Department witness at hearing, the payment of benefits for the weeks at issue was due to an "error" and was not "fraudulent or intentional." Transcript at 28. The payment of benefits was due to an agency error because when claimant filed her initial claim, she spoke with a Department representative and informed the representative that she was beginning a leave of absence to care for her grandchild and planned to claim benefits during her leave. As such, the Department erred in authorizing payment for the weeks at issue because it should have recognized that claimant was not available for work, and therefore ineligible for benefits, during the weeks claimed. If an overpayment is assessed against claimant, she may wish to make a request for an overpayment waiver by following instructions in one of the notes at the end of this decision.

Claimant was not available for work during the weeks from February 27, 2022 through March 26, 2022 (weeks 09-22 through 12-22) and is ineligible to receive unemployment insurance benefits for those weeks.

DECISION: Order No. 22-UI-197381 is affirmed.

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

DATE of Service: October 24, 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: The Department may defer recovery or completely waive an overpaid amount if certain standards are met. To make a request for Waiver of Overpayment Recovery, call 503-947-1995 or email OED_Overpayment_unit@employ.oregon.gov . You must submit waiver applications that correspond to the program for which you were overpaid benefits. **If you were overpaid benefits under both state and federal benefits programs, you will need to file two separate waiver applications.** To access a State UI Overpayment Waiver application go online to <https://unemployment.oregon.gov/waivers> and click the link for “State UI Overpayment Waiver”. To access a Federal Program Overpayment Waiver application go online to <https://unemployment.oregon.gov/waivers> and click the link for “Federal Program Overpayment Waiver”.

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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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