

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0956

Reversed
Eligible Weeks 14-21, 18-21 through 21-21

PROCEDURAL HISTORY: On July 8, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work or able to work for the weeks including April 4, 2021 through May 29, 2021 (weeks 14-21 through week 21-21) and was therefore not eligible to receive unemployment insurance benefits for those weeks (decision # 152416). Claimant filed a timely request for hearing. On September 7, 2022, ALJ Buckley conducted a hearing and issued Order No. 22-UI-202158, modifying decision # 152416 by concluding that claimant was not available for work for the weeks including April 4, 2021 through April 10, 2021 (week 14-21) and May 2, 2021 through May 28, 2021 (weeks 18-21 through 21-21) and was therefore not eligible to receive benefits for those weeks. On September 12, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant submitted written arguments on September 20, 2022 and September 22, 2022. Both of claimant's arguments 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 arguments to the extent they were based on the record.

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 was able to work for the period April 4, 2021 through April 10, 2021 and May 2, 2021 through May 29, 2021, is **adopted**.

FINDINGS OF FACT: (1) On March 22, 2020, claimant filed an initial claim for unemployment insurance benefits.

(2) Claimant claimed benefits for the weeks including April 4, 2021 through April 10, 2021 (week 14-21) and May 2, 2021 through May 28, 2021 (weeks 18-21 through 21-21). These are the weeks at issue.

The Department paid claimant benefits for week 14-21, but did not pay claimant benefits for the remaining weeks at issue.

(3) The Department determined that claimant customarily performed work as a food demonstrator, that his labor market for this type of work was Portland and Beaverton, Oregon, and that such work was customarily performed in his labor market between 9:00 a.m. and 6:00 p.m. each day of the week.

(4) Around March 2021, claimant had a slight rise in PSA levels. Claimant previously had prostate cancer and his physician suggested he undergo radiation treatments to address the elevated PSA levels. Claimant's physician told him that this treatment was optional and merely a preventative measure.

(5) On April 7, 2021, claimant began a series of radiation treatments. These radiation treatments occurred four or five times a week from 11:00 a.m. until 11:30 a.m. Claimant continued to receive these treatments until May 26, 2021. The treatments did not interfere with claimant's ability to work.

CONCLUSIONS AND REASONS: Claimant was available for work during the weeks at issue.

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; and
- (b) Capable of accepting and reporting for any suitable work opportunities within the labor market in which work is being sought, including temporary and part time opportunities; and
- (c) Not imposing conditions which substantially reduce the individual's opportunities to return to work at the earliest possible time; and
- (d) Physically present in the normal labor market area as defined by section (6) of this rule, every day of the week * * *.

* * *

OAR 471-030-0036(3) (December 8, 2019).

The order under review concluded that claimant was not available for work during the weeks at issue because he was receiving radiation treatments, four or five times a week, during the customary hours and days of the work he was seeking. Order 22-UI-202158 at 3. The record does not support this conclusion.

During the weeks at issue, claimant was receiving medical treatments during the hours that the work he was seeking was customarily performed in his labor market. The fact that this potential scheduling conflict existed does not constitute an automatic bar to being considered available for work under OAR

471-030-0036(3). The Department determined that the customary hours for the work that claimant was seeking within his labor market were 9:00 a.m. to 6:00 p.m. each day of the week. Claimant's medical treatments were scheduled from 11:00 a.m. to 11:30 a.m. Thus, if claimant was not willing to work during the hours and days customary for the work he was seeking because the medical appointments occurred during those hours, he would not be considered available for work under OAR 471-030-0036(3)(a).

However, the record shows that claimant was willing to resolve this conflict in favor of returning to work if the opportunity arose. At hearing, claimant testified that he would not have done the treatment without first ensuring that it would not affect his ability to work. Audio Record at 17:35. Claimant also testified that the treatments were optional, and that he could have left the treatments if necessary. Audio Record at 15:10 and 18:30. From these statements, it is reasonable to infer that claimant would have either cancelled or rescheduled his medical appointments if they conflicted with offered work. Given claimant's willingness to adjust or forgo his medical treatments in order to return to work, the record shows claimant was willing to work during all of the usual hours and days of the week customary for the work he had been seeking. Therefore, claimant was available for work, and thus eligible for benefits, during the weeks at issue.

DECISION: Order No. 22-UI-202158 is set aside, as outlined above.

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

DATE of Service: December 2, 2022

NOTE: This decision reverses 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.

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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

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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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