

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-1030

Modified
Ineligible Week 30-22
Eligible Weeks 31-22 to 34-22

PROCEDURAL HISTORY: On August 10, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not able to work during the week of July 24, 2022 through July 30, 2022 (week 30-22) and was therefore not eligible to receive unemployment insurance benefits for that week and until the reason for the denial had ended (decision # 151424). Claimant filed a timely request for hearing. On September 14, 2022, ALJ Frank conducted a hearing and on September 22, 2022, issued Order No. 22-UI-203332, modifying decision # 151424 by concluding that claimant was not able to work during each of the weeks including July 24, 2022 through August 27, 2022 (weeks 30-22 through 34-22) and was therefore ineligible to receive benefits for those weeks. On October 10, 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) On May 19, 2022, claimant filed an initial claim for benefits.

(2) Around July 27, 2022, claimant was admitted to the hospital. Claimant was unconscious when he was admitted and required surgery to address a fracture in his leg. Following his admission, claimant remained in the hospital for two or three days to recover.

(3) Around July 29, 2022, claimant was discharged from the hospital with a cast and crutches. Shortly thereafter, he obtained a wheelchair to assist with mobility. It took claimant several days after his discharge to adapt to this medical equipment and regain mobility.

(4) Thereafter, claimant filed weekly continued claims for benefits for each of the weeks of July 24, 2022 through August 27, 2022 (weeks 30-22 through 34-22). These are the weeks at issue. The Department paid benefits for week 30-22, but did not pay benefits for any of the other weeks at issue.

(5) Throughout the weeks at issue, claimant had reduced mobility. His leg was in a cast and he required crutches to walk. During this period, claimant periodically used a wheelchair. However, claimant's physician did not place any restrictions on what tasks claimant could perform or how frequently he could work. Further, beginning on or about July 31, 2022, claimant had increased mobility on his crutches and was sufficiently able to perform tasks such as standing, walking, and interacting with customers in a retail setting.

(6) During the weeks at issue, claimant sought retail work that typically required standing or walking throughout the shift.

CONCLUSIONS AND REASONS: Claimant was not able to work, and therefore ineligible to receive benefits, for the week including July 24, 2022 through July 30, 2022 (week 30-22). Claimant was able to work, and therefore eligible to receive benefits for the weeks including July 31, 2022 through August 27, 2022 (weeks 31-22 through 34-22).

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). An individual shall be considered able to work in a particular week for purposes of ORS 657.155(1)(c) only if physically and mentally capable of performing the work the individual is actually seeking during all of the week. OAR 471-030-0036(2) (March 25, 2022).

The order under review concluded that claimant was unable to work during all the weeks at issue because it concluded that "it was more likely than not that...claimant was not physically capable of performing the retail work that he sought." Order No 22-UI-203332 at 2. While this was true for the initial week that claimant was injured (week 30-22), the record does not support this conclusion for the remaining weeks at issue.

During week 30-22 claimant was not able to work because of his leg injury. During this week, claimant was hospitalized because he dislocated and fractured his ankle. Claimant testified that he remained in the hospital for two or three days, and that he had crutches and a cast when he was released. Audio Record at 11:40-11:55. Further, claimant testified that after he was released it took him a couple of days in order to adapt to moving around on the crutches. Audio Record at 15:50 to 16:10. Based on this hospitalization and the subsequent recovery during week 30-22, claimant was not physically capable of performing the retail work he actually sought during this week.

However, the record shows that, more likely than not, claimant was able to work during weeks 31-22 through 34-22. Claimant provided testimony that in the weeks following his injury, he had increased mobility on the crutches and was sufficiently able to stand, walk, and interact with customers. Audio record at 18:00 to 18:10. Additionally, claimant testified that he was on no work restrictions from his physician. Audio record at 14:50 to 15:10. The Department's witness testified that claimant stated on July 31, 2022, that he was unable to work but otherwise did not present any testimony regarding claimant's ability to work after week 30-22, and did not contest claimant's testimony regarding his

physical abilities during weeks 31-22 through 34-22. Given claimant's uncontroverted testimony regarding his mobility, as well as the fact that he was not on any work restrictions from his physician, the record shows that claimant was physically capable of performing the retail work he actually sought during weeks 31-22 through 34-22.

Claimant was not able to work during week 30-22 and therefore was ineligible to receive benefits for that week. During weeks 31-22 through 34-22 however, claimant was able to perform the work he sought and is therefore eligible to receive benefits for those weeks.

DECISION: Order No. 22-UI-203332 is modified, as outlined above.

DATE of Service: December 21, 2022

NOTE: This decision modifies 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
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