

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0128

Order No. 23-UI-211656 Reversed ~ Eligible Week 23-22
Orders No. 23-UI-211655, 23-UI-211653, and 23-UI-211654 Affirmed ~
Ineligible Weeks 32-22 through 34-22, 36-22 through 37-22, and 39-22 through 44-22

PROCEDURAL HISTORY: On November 17, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant did not actively seek work for the week of June 5, 2022 through June 11, 2022 (week 23-22) and therefore was ineligible to receive unemployment insurance benefits for that week (decision # 104950). Also on November 17, 2022, the Department served notice of an administrative decision concluding that claimant did not actively seek work for the weeks including August 7, 2022 through August 27, 2022 (weeks 32-22 through 34-22) and therefore was ineligible to receive benefits for those weeks (decision # 105952). Also on November 17, 2022, the Department served notice of an administrative decision concluding that claimant did not actively seek work for the weeks including September 4, 2022 through September 17, 2022 (weeks 36-22 through 37-22) and therefore was ineligible to receive benefits for those weeks (decision # 110441). Also on November 17, 2022, the Department served notice of an administrative decision concluding that claimant did not actively seek work for the weeks including September 25, 2022 through November 5, 2022 (weeks 39-22 through 44-22) and therefore was ineligible to receive benefits for those weeks (decision # 114205). Claimant filed timely requests for hearing on decisions # 104950, 105952, 110441, and 114205.

On January 3, 2023, ALJ Scott conducted a combined hearing on decisions # 104950, 105952, 110441, and 114205, and on January 5, 2023 issued Orders No. 23-UI-211656, 23-UI-211655, 23-UI-211653, and 23-UI-211654, affirming those administrative decisions, respectively. On January 20, 2023, claimant filed applications for review of Orders No. 23-UI-211656, 23-UI-211655, 23-UI-211653, and 23-UI-211654 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-211656, 23-UI-211655, 23-UI-211653, and 23-UI-211654. For case-tracking purposes, this decision is being issued in quadruplicate (EAB Decisions 2023-EAB-0126, 2023-EAB-0127, 2023-EAB-0129, and 2023-EAB-0128).

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), Orders No. 23-UI-211655, 23-UI-211653, and 23-UI-211654 are **adopted**. The remainder of this decision addresses Order No. 23-UI-211656, regarding whether claimant met the actively seeking work requirement during week 23-22.

FINDINGS OF FACT: (1) On April 12, 2022, claimant filed an initial claim for unemployment insurance benefits. Claimant subsequently claimed benefits for the week of June 5, 2022 through June 11, 2022 (week 23-22). This is the week at issue. The Department paid claimant benefits for the week at issue.

(2) Prior to the week at issue, claimant was employed as a project manager with a construction company. Claimant last performed work for the employer during the last week of May 2022. At that time, the employer told claimant that they did not have any additional work for him at the time, but that they would probably have another project for him to work on in “a month or so.” Transcript at 14.

(3) During the week at issue, claimant maintained contact with the employer. Claimant also performed two other work seeking activities during that week.

(4) Claimant never returned to work for the employer, as the employer never made additional work available for him and ultimately closed their business.

CONCLUSIONS AND REASONS: Claimant actively sought work during week 23-22.

Unless an individual is temporarily unemployed or qualifies for other 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 a direct contact with an employer who might hire the individual. OAR 471-030-0036(5)(a) (March 25, 2022). “Direct contact” means “making contact with an employer in person, by phone, mail, or electronically to inquire about a job opening or applying for job openings in the manner required by the hiring employer.” OAR 471-030-0036(5)(a)(B).

For individuals who are temporarily unemployed, OAR 471-030-0036(5)(b) defines “actively seeking work” as follows:

(A) They are considered to be actively seeking work when they remain in contact with their regular employer and are capable of accepting and reporting for any suitable work with that employer;

(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.

Claimant was laid off during the last week of May 2022 with the expectation that he would be returning to work in “a month or so.” Claimant did not perform five work seeking activities during the week at issue. The order under review therefore concluded that claimant did not actively seek work during the week at issue because he was not temporarily unemployed, as “the period of unemployment extended well beyond four weeks and therefore, does not comply with OAR 471-030-0036(5)(b)(D)(ii)[.]” Order No. 23-UI-211656 at 3. However, the record shows that claimant was temporarily unemployed during the week at issue, and met the actively seeking work requirement for that week.

Whether claimant was temporarily unemployed during the week at issue depends, in part, on when claimant last performed services for the employer. Claimant was not able to offer the exact date on which he last performed services for the employer, but testified that it occurred in the last week of May 2022. Transcript at 13. The actual last week of May 2022 began on May 29, 2022 and ended on June 4, 2022 (week 22-22). It is not clear from claimant’s testimony whether he meant to indicate that he last worked during this week, or during the last *full* week of May 2022, which was May 22, 2022 through May 28, 2022 (week 21-22). Even assuming that claimant’s last day of work was on the earliest of these dates—May 22, 2022—the week at issue still fell within the four-week period allowed under OAR 471-030-0036(5)(b)(D)(ii).

Claimant also met the other requirements under OAR 471-030-0036(5)(b), as he remained in contact with the employer during that week, had a reasonable expectation that he would be returning to work for the employer, and was separated from the employer due to a lack of work. Therefore, claimant was temporarily unemployed during the week at issue, and met the actively seeking work requirement applicable to him that week.

The fact that the period of employment extended beyond four weeks does not change this analysis. Determinations of eligibility under OAR 471-030-0036 are conducted on a week-by-week basis using the facts of an individual’s circumstances *during that week*. During the week at issue, claimant had reason to believe that the employer would bring him back to work within about a month of when he had last worked for them, and claimant was also within the four-week period allowed under OAR 471-030-0036(5)(b)(D)(ii) during that time. That claimant’s period of unemployment ultimately exceeded four weeks does not retroactively change the fact that he met the requirements to be “temporarily unemployed” during the week at issue. Rather, claimant’s “temporarily unemployed” status *ended* after that four-week period elapsed. At that point, the standard actively seeking work requirement applied to claimant.

For the above reasons, claimant was temporarily unemployed during week 23-22 and met the actively seeking work requirement for that week. Claimant was therefore eligible to receive benefits for the week at issue.

DECISION: Order No. 23-UI-211656 is set aside, as outlined above. Orders No. 23-UI-211655, 23-UI-211653, and 23-UI-211654 are affirmed, as outlined above.

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

DATE of Service: March 16, 2023

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.

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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