

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0312

Affirmed
Late Requests for Hearing Allowed
No Disqualification
Eligible Weeks 34-20 through 21-21

PROCEDURAL HISTORY: On March 12, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and was therefore disqualified from receiving unemployment insurance benefits effective June 7, 2020 (decision # 130024). Also on March 12, 2021, the Department served notice of an administrative decision concluding that claimant was not available for work during each of the weeks including August 16, 2020 through March 6, 2021 (weeks 34-20 through 09-21) and was denied benefits for those weeks and until the reason for the denial had ended (decision # 134115). On April 1, 2021, decisions # 130024 and 134115 became final without claimant having filed a request for hearing.

On April 5, 2021, claimant filed late requests for hearing on decisions # 130024 and 134115. ALJ Kangas considered claimant's requests, and on April 27, 2021 issued Orders No. 21-UI-165620 and 21-UI-165617, dismissing claimant's requests for hearing as late, subject to claimant's right to renew the requests by responding to an appellant questionnaire by May 11, 2021. On May 5, 2021, claimant filed a timely response to the appellant questionnaire. On July 13, 2021, the Office of Administrative Hearings (OAH) mailed letters to the parties stating that Orders No. 21-UI-165620 and 21-UI-165617 were cancelled and that hearings would be scheduled to determine if claimant had good cause to file her late requests for hearing on decisions # 130024 and 134115, and if so, the merits of decisions # 130024 and 134115.

On March 6, 2023, ALJ Wardlow conducted hearings at which the employer failed to appear, and on March 7, 2023 issued Orders No. # 23-UI-218232 and 23-UI-218229, allowing claimant's late requests for hearing on decisions # 130024 and 134115, and reversing decisions # 130024 and 134115 by concluding that claimant was discharged, but not for misconduct, and was therefore not disqualified from receiving benefits based on the work separation, and that claimant was available for work during the weeks of August 16, 2020 through May 29, 2021 (weeks 34-20 through 21-21), and was therefore eligible to receive benefits for those weeks. On March 15, 2023, the employer filed applications for review of Orders No. # 23-UI-218232 and 23-UI-218229 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. # 23-UI-218232 and 23-UI-218229. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2023-EAB-0312 and 2023-EAB-0311).

WRITTEN ARGUMENT: The employer did not declare that they provided a copy of their argument to the opposing party as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond the employer's reasonable control prevented them from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the orders under review are **adopted**.¹

DECISION: Orders No. # 23-UI-218232 and 23-UI-218229 are affirmed.

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

DATE of Service: April 21, 2023

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 In addition to the reasons stated in Orders No. # 23-UI-218232 and 23-UI-218229 for concluding that claimant was discharged, but not for misconduct, and was available for work during the weeks at issue, claimant's separation from employment and availability for work were considered under *Temporary* OAR 471-030-0070(2)(a) (relating to work separation, effective March 8, 2020 through September 12, 2020), *Temporary* OAR 471-030-0070(5) (relating to availability, effective March 8, 2020 through September 12, 2020), and *Temporary* OAR 471-030-0071 (relating to availability, effective September 13, 2020 through September 25, 2021).



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 الإستئناف 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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