

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0691

Reversed
Eligible Weeks 10-23 through 22-23

PROCEDURAL HISTORY: On April 13, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work from March 5 through April 8, 2023 (weeks 10-23 through 14-23) and was not eligible benefits for that period and until the reason for the denial had ended (decision # 152235). Claimant filed a timely request for hearing. On June 7, 2023, ALJ Amesbury conducted a hearing, and on June 12, 2023 issued Order No. 23-UI-227592, modifying decision # 152235 by concluding that claimant was not available for work from March 5 through June 3, 2023 (weeks 10-23 through 22-23).¹ On June 19, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant's argument in reaching this decision.

FINDINGS OF FACT: (1) On March 7, 2023, claimant filed an initial claim for unemployment insurance benefits. The Department determined that the claim was valid. Claimant filed weekly claims for the weeks from March 5 through June 3, 2023 (weeks 10-23 through 22-23). These are the weeks at issue. The Department did not pay claimant benefits for the weeks at issue.

(2) Immediately prior to filing his initial claim for benefits, claimant worked as a cannabis trimmer, and made approximately \$18.00 per hour.

(3) When filing his initial claim for benefits, claimant was asked, "Are you willing to accept the same rate of pay for future work?" to which claimant answered, "No." Transcript at 10. He explained the "No" answer by writing, "I am a very skilled laborer that is quick and efficient and reliable. My employers have not been honest with me and have been breaking labor laws behind closed doors," and did not list a wage he was willing to accept. Transcript at 10. Claimant misunderstood the question and

¹ Although Order No. 23-UI-227592 stated that it affirmed decision # 152235, it modified that decision by changing the dates of ineligibility from March 5 through April 8, 2023 to March 5 through June 3, 2023. Order No. 23-UI-227592 at 3.

did not “realize that the question stated that [he] was only accepting [offers of employment] over \$18.00 an hour.” Transcript at 20.

(4) During the weeks at issue, claimant applied for work with employers, “most of [whom] are paying \$14.00 to \$15.00 an hour.” Transcript at 21. Claimant was willing to accept such work if offered.

(5) During the weeks at issue, the minimum wage in claimant’s region was \$13.50 per hour.

CONCLUSIONS AND REASONS: Claimant was available for work from March 5 through June 3, 2023.

For an individual to be considered “available for work” for purposes of ORS 657.155(1)(c), they must be:

* * *

(c) Not imposing conditions which substantially reduce the individual’s opportunities to return to work at the earliest possible time;

* * *

The order under review concluded that claimant was unavailable for work during the weeks at issue because he was unwilling to work for less than \$18.00 per hour during that period, which substantially reduced his opportunities to return to work at the earliest possible time. Order No. 23-UI-227592 at 3. The record does not support this conclusion.

Claimant was willing to work for less than \$18.00 per hour, and his desire for a wage of \$18.00 per hour or more did not substantially reduce his opportunities to return to work at the earliest possible time. The record shows that claimant did not understand the question on his initial claim form regarding accepting the same rate of pay as his last work for future work. The question directed that, if he answered that he would not accept that rate of pay, to explain that answer and “enter the lowest rate of pay you are willing to accept.” Transcript at 10. Claimant answered, “I am a very skilled laborer that is quick and efficient and reliable. My employers have not been honest with me and have been breaking labor laws behind closed doors.” Transcript at 10. Claimant did not list any wage rate that he was willing to accept.

This explanation supports claimant’s testimony that he did not understand the question, and suggests that claimant understood the question to ask whether he was willing to return to his *previous employment* for the same rate of pay, which he was apparently unwilling to do for the reasons given. Further, while claimant likely believed his skills and experience made his labor worth more than \$18.00 per hour, most of the jobs that claimant applied to during the weeks at issue would have paid \$14.00 or \$15.00 per hour. Given that the record does not show that claimant rejected any offer of employment or failed to apply for a position based on its wage, this suggests that claimant was not imposing conditions on what wage he was willing to accept. To the extent that claimant desired an hourly wage in excess of \$18.00, either upon hire or through subsequent wage increases, this did not limit his opportunities to return to work at the earliest possible time because he did not limit his work search to jobs offering such wages.

Accordingly, claimant was available for work during the weeks at issue, and is eligible to for benefits for the weeks at issue.

DECISION: Order No. 23-UI-227592 is set aside, as outlined above.

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

DATE of Service: July 28, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



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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