EO: 200
BYE: 202416

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

719
AAA 005.00

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0808

Reversed & Remanded

PROCEDURAL HISTORY: On June 1, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant failed to actively seek work from April 23 through May 6, 2023 (weeks 17-23 and 18-23) and was not eligible for benefits for those weeks (decision # 112322). Also on June 1, 2023, the Department served notice of an administrative decision concluding that claimant failed to actively seek work from May 14 through 27, 2023 (weeks 20-23 and 21-23) and was not eligible for benefits for those weeks (decision # 112949). Claimant filed timely requests for hearing. On July 10, 2023, ALJ Sachet-Rung conducted a hearing, and on July 13, 2023 issued Orders No. 23-UI-230324 and 23-UI-230325, affirming decisions # 112322 and 112949. On July 21, 2023, claimant filed applications for review of Orders No. 23-UI-230324 and 23-UI-230325 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-230324 and 23-UI-230325. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2023-EAB-0809 and 2023-EAB-0808).

FINDINGS OF FACT: (1) On April 24, 2023, claimant filed an initial claim for benefits. The Department determined that claimant had a monetarily valid claim with a weekly benefit amount of $783.

(2) Thereafter, claimant claimed the benefits for the weeks of April 23 through May 6, 2023 (weeks 17-23 and 18-23) and May 14 through 27, 2023 (weeks 20-23 and 21-23). These are the weeks at issue. The Department did not pay claimant benefits for week 17-23 but did pay claimant for weeks 18-23, 20-23, and 21-23.[1]

[1] EAB has taken notice of these facts, which are contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). Any party that objects to our taking notice of this information must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the noticed fact will remain in the record.

(3) When claimant claimed benefits for week 17-23, he reported that he sought work from Melinas Beverage.

(4) When claimant claimed benefits for week 18-23, he reported that he sought work from Hitachi by submitting his resume for a position as an engineer.

(5) When claimant claimed benefits for week 20-23, he reported that he sought work from Pepsi by submitting his resume for a position as a truck driver. Claimant also reported that he sought work from Peninsula Truck Company by submitting his resume for a position as a truck driver.

(6) When claimant claimed benefits for week 21-23, he reported that he sought work from Pepsi by submitting his resume for a position as a truck driver. Claimant also reported that he sought work from Peninsula Truck Company by submitting his resume for a position as a truck driver.

(7) When claimant claimed week 17-23, he did so by calling in to the Department's telephone weekly claims line. Claimant mentioned only Melinas Beverage that week because he "didn't know [he] had to give five, looking for five jobs[.]" Transcript at 16. When claimant claimed weeks 18-23, 20-23, and 21-23, he used the Department's online claims system to claim. When using the online system for each of those weeks, claimant reached a screen with five fields for him to report his work-seeking activities. However, claimant did not understand he needed to fill in all five fields, and instead typically filled in two fields each week. When the online system allowed claimant to submit the completed weekly claim with only two of the five fields filled in, claimant assumed the work-seeking activities he reported were sufficient.

(8) In June 2020, claimant received two letters from the Department advising that the work-seeking activities he reported for the weeks at issue were insufficient. Shortly thereafter, claimant called the Department. A representative informed claimant that he needed to report five work-seeking activities each week and that if he disagreed with the Department's decision not to pay benefits for some of the weeks at issue, he needed to request a hearing.

CONCLUSIONS AND REASONS: Orders No. 23-UI-230324 and 23-UI-230325 are reversed, and these matters remanded for further proceedings consistent with this order.

To be eligible to receive benefits, unemployed individuals must actively seek work during each week claimed. ORS 657.155(1)(c). With few 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). "Work seeking activities include but are not limited to, registering for job placement services with the Employment Department, attending job placement meetings sponsored by the Employment Department, participating in a job club or networking group dedicated to job placement, updating a resume, reviewing the newspaper or job placement web sites without responding to a posted job opening, and making direct contact with an employer." OAR 471-030-0036(5)(a)(A). "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).

The orders under review each concluded that claimant did not conduct five work-seeking activities during the respective weeks to which each order pertained, and therefore was ineligible for benefits because he failed to actively seek work. Order No. 23-UI-230324 at 3; Order No. 23-UI-230325 at 3. The record as developed does not support these conclusions.

The record as developed is ambiguous as to whether claimant actually failed to conduct at least five work-seeking activities during each of the weeks at issue, or whether he did conduct the required work seeking activities but merely failed to report them when he claimed because he did not know he was required to do so. On remand, the ALJ must resolve this ambiguity.

To that end, the ALJ should to read to claimant the non-exclusive list of what constitutes work-seeking activities per OAR 471-030-0036(5)(a)(A), and explain what amounts to a direct contact with an employer per OAR 471-030-0036(5)(a)(B).[2] Then the ALJ should ask questions to develop whether, for each of the weeks at issue, claimant conducted at least five work-seeking activities per week, and whether at least two of the five work-seeking activities each week constituted direct contacts with employers who might hire him.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary for a determination of whether claimant actively sought work during the weeks at issue, Orders No. 23-UI-230324 and 23-UI-230325 are reversed, and these matters are remanded.

DECISION: Orders No. 23-UI-230324 and 23-UI-230325 are set aside, and these matters remanded for further proceedings consistent with this order.

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

DATE of Service: August 31, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 23-UI-230324 and 23-UI-230325 or return these matters to EAB. Only timely applications for review of the subsequent orders will cause either of these matters to return to EAB.

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.

[2] Note that claimant is entitled to an explanation at hearing of the issues pertaining to the actively seeking work requirement, including what he is required to prove to meet the standard. ORS 657.270(3) ("When the claimant or the employer is not represented at the hearing by an attorney, paralegal worker, legal assistant, union representative or person otherwise qualified by experience or training, the administrative law judge shall explain the issues involved in the hearing and the matters the unrepresented claimant or employer must either prove or disprove.").

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 – 本判决会影响您的失业救济金。 如果您不明白本判决， 请立即联系就业上诉委员会。 如果您不同意此判决，您可以按照该判决结尾所写的说明，向俄勒冈州上诉法院提出司法复审申请。

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 ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

Arabic

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فورا، 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 دستورالعمل 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
www.Oregon.gov/Employ/eab