

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0043

Affirmed
Ineligible Weeks 32-23 through 34-23

PROCEDURAL HISTORY: On October 25, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant did not actively seek work from August 6 through 26, 2023 (weeks 32-23 through 34-23) and was not eligible for benefits for those weeks (decision # 62506). Claimant filed a timely request for hearing. On December 11, 2023, ALJ Nyberg conducted a hearing, and on December 14, 2023, issued Order No. 23-UI-243481, affirming decision # 62506. On December 29, 2023, 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 her reasonable control prevented her 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 December 27, 2022, claimant filed an initial claim for unemployment insurance benefits. The Department determined that claimant's weekly benefit amount was \$536.

(2) Claimant claimed benefits for the weeks from August 6 through 26, 2023 (weeks 32-23 through 34-23). These are the weeks at issue. The Department paid claimant benefits for all of the weeks at issue.

(3) Claimant customarily works as a school bus driver. During the academic year, claimant works 25 hours per week, earning \$28 per hour. During summer breaks, claimant occasionally performs work for her employer, performing various tasks such as recruiting work or preparing for the upcoming academic year. During some weeks of the 2023 summer break, claimant earned more than her weekly benefit amount. Claimant did not claim benefits during those weeks.

(4) After a break in claiming benefits, claimant restarted her claim on August 7, 2023. Claimant indicated at that time that she had last performed work on July 27, 2023, and that her employer told her she would be returning to work on September 5, 2023.

(5) Claimant worked “a few days” during the week of August 20 through 26, 2023 (week 34-23), and earned \$334.57 during that week. Audio Record at 15:04. Claimant did not earn more than her weekly benefit amount for any of the weeks at issue.

(6) On her weekly claim forms for each of the weeks at issue, claimant marked the “temporarily unemployed” box, which thereafter prompted her to enter only a single work seeking activity. Claimant performed more work seeking activities for each of the weeks at issue than she reported on her weekly claims.

CONCLUSIONS AND REASONS: Claimant did not actively seek work during the weeks at issue and therefore was not eligible for benefits for those weeks.

To be eligible to receive benefits, unemployed individuals must actively seek work during each week claimed. ORS 657.155(1)(c). 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's eligibility for benefits for the weeks at issue turns on whether she was considered "actively seeking work" for those weeks under either the typical requirements of OAR 471-030-0036(5)(a), or the modified "temporarily unemployed" requirements of OAR 471-030-0036(5)(b). The record shows that she did not meet the requirements under either subsection.

First, claimant's circumstances do not establish that she was temporarily unemployed during the weeks at issue. When claimant restarted her claim on August 7, 2023, she reported that she had last worked for her employer on July 27, 2023, and suggested at hearing that she believed this date was correct. Audio Record at 12:42. Therefore, more likely than not, this was claimant's last day of work for the employer prior to the August 7, 2023, claim restart. At the time of that restart, claimant expected to return to her regular employment on September 5, 2023, when the new academic year was to start.

It is not clear from the record if the week of July 27, 2023 (week 30-23) was, per OAR 471-030-0036(5)(b)(D)(i), the last week in which she had earnings less than her weekly benefit amount. However, given that the record shows that claimant's summer work for the employer was sporadic, it can be inferred that week 30-23 was in fact that week. Claimant's reasonable expectation of returning to full-time work on September 5, 2023¹ (the week of September 3 through 9, 2023, or week 36-23) meant that there were at least *five* weeks between the week in which she had last earned less than her weekly benefit amount and the week in which she expected to return to full-time work. As such, claimant was not temporarily unemployed during the weeks at issue, and was required to perform five work seeking activities per week, per OAR 471-030-0036(5)(a)(B).

The record shows that claimant reported one work seeking activity per week for each of the weeks at issue, which does not comply with the requirements of OAR 471-030-0036(5)(a)(B). At hearing, claimant testified that she actually performed more work seeking activities during each of these weeks than she reported on the weekly claim forms. Audio Record at 17:14. However, claimant did not testify as to *how many* activities she performed each week, nor did she offer specific information on what those activities were. As such, the record does not show that claimant performed the five required work seeking activities for any of the weeks at issue.

For the above reasons, claimant failed to meet the actively seeking work requirements for any of the weeks at issue, and therefore is not eligible for benefits for those weeks.

DECISION: Order No. 23-UI-243481 is affirmed.

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

¹ While claimant only worked 25 hours per week during the academic year, her weekly rate of pay (\$28 per hour x 25 hours per week = \$700 per week) is greater than her weekly benefit amount of \$536.

DATE of Service: February 1, 2024

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

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 الاستئناف 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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