

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0045

Order No. 23-UI-243997 ~ Reversed ~ Eligible Weeks 27-23 through 28-23
Order No. 23-UI-243995 ~ Modified ~ Eligible Week 30-23; Ineligible Weeks 31-23 through 35-23

PROCEDURAL HISTORY: On November 22, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not actively seeking work during the weeks of July 2, 2023, through July 15, 2023 (weeks 27-23 and 28-23) and was therefore ineligible to receive unemployment insurance benefits for those weeks (decision # 112605). Also on November 22, 2023, the Department served notice of an administrative decision concluding that claimant was not actively seeking work during the weeks of July 23, 2023, through September 2, 2023 (weeks 30-23 through 35-23) and was therefore ineligible to receive unemployment insurance benefits for those weeks (decision # 113528). Claimant filed timely requests for hearing. On December 20, 2023, ALJ Griffin conducted a consolidated hearing, and on December 21, 2023, issued Orders No. 23-UI-243997 and 23-UI-243995, affirming decisions # 112605 and 113528, respectively. On December 29, 2023, claimant filed applications for review of Orders No. 23-UI-243997 and 23-UI-243995 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-243997 and 23-UI-243995. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2024-EAB-0045 and 2024-EAB-0044).

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

FINDINGS OF FACT: (1) On July 2, 2023, claimant filed an initial claim for unemployment insurance benefits because her employer, McKenzie Montessori Institute, informed her that she was being temporarily laid off due to a seasonal lack of work during the summer. Claimant had typically worked approximately 30 hours per week until she was informed of the layoff on approximately June 30, 2023. The Department determined the claim was monetarily valid with a weekly benefit amount (WBA) of \$242.

(2) At the time claimant was informed of the temporary layoff, the employer told claimant that she would be offered work as a substitute during the summer. Claimant expected that the substitute work would begin within four weeks of her layoff and that she would earn more than her WBA each week.

(3) From June 30, 2023, through at least July 22, 2023, claimant maintained contact with the employer. Claimant did not work during the weeks of July 2, 2023, through July 22, 2023 (weeks 27-23 through 29-23) because the employer did not have work available.

(4) Beginning the week of July 23, 2023, through July 29, 2023 (week 30-23), claimant resumed working for the employer as a substitute at a reduced number of hours. Claimant worked all hours offered by the employer but did not have earnings in excess of her \$242 WBA each week during the weeks of July 23, 2023, through September 2, 2023 (weeks 30-23 through 35-23).

(5) Claimant did not complete at least five work-seeking activities during the weeks of July 2, 2023, through July 15, 2023, and July 23, 2023, through September 2, 2023 (weeks 27-23, 28-23, and 30-23 through 35-23). These are the weeks at issue. Claimant filed weekly claims for benefits for each of these weeks.

CONCLUSIONS AND REASONS: Claimant was actively seeking work during the weeks of July 2, 2023, through July 15, 2023, and July 23, 2023, through July 29, 2023 (weeks 27-23, 28-23, and 30-23). Claimant was not actively seeking work during the weeks of July 30, 2023, through September 2, 2023 (weeks 31-23 through 35-23).

To be eligible to receive benefits, unemployed individuals must actively seek work during each week claimed. ORS 657.155(1)(c). Except when “temporarily unemployed,” 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.

The orders under review concluded that claimant could not be considered “temporarily unemployed” under the Department’s rules for any of the weeks at issue and was therefore required to conduct five work-seeking activities each week to be considered actively seeking work, which she did not do. Order No. 23-UI-243997 at 3; Order No. 23-UI-243995 at 3. The record supports that claimant was not temporarily unemployed during weeks 31-23 through 35-23 and was not actively seeking work during those weeks because she did not conduct five work-seeking activities each week. However, the record does not support that claimant was not “temporarily unemployed” and not actively seeking work during weeks 27-23, 28-23, and 30-23.

The first four weeks during which claimant was unemployed following the effective date of her claim were the weeks of July 2, 2023, through July 29, 2023 (weeks 27-23 through 30-23). Claimant had been told by her employer at the beginning of this period that although she was being temporarily laid off from her usual employment, she would be offered work as a substitute. Claimant testified that she assumed she would begin the substitute work during the weeks of July 2, 2023, through July 15, 2023. Transcript at 12-13. After not being offered any work these weeks, claimant testified that she called her supervisor to reiterate her need for work, which resulted in claimant being offered hours beginning the week of July 23, 2023, through July 29, 2023 (week 29-23). Transcript at 13. Claimant’s paystub showed that she worked 12 hours during week 29-23, and it can reasonably be inferred from claimant’s testimony that she was not offered additional hours. Order No. 23-UI-243997 Exhibit 1 at 2. Claimant testified that she believed she would be working as a substitute “more full time” and that she felt “misled” by the employer offering her far fewer hours as a substitute than she had usually worked. Transcript at 14. From this evidence, it is reasonable to infer that when claimant was laid off, she had a reasonable expectation of returning to work for the employer as a substitute within four weeks, and that she would be offered enough hours to earn more than her WBA. She could therefore be considered “temporarily unemployed” within the limits of OAR 471-030-0036(5)(b)(D) for those four weeks if her circumstances otherwise met the definition of that term.

Claimant otherwise met the definition of “temporarily unemployed” because she became unemployed due to a lack of work and eventually returned to work for her most recent employer. While claimant did not resume earning more than her WBA within the first four weeks of her claim, claimant reasonably expected at the time of layoff and during those weeks that the employer was going to allow her to do so. She was therefore “temporarily unemployed” as that term is defined by OAR 471-030-0036(5)(b) during weeks 27-23 through 30-23. Because claimant remained in contact with her employer and was otherwise capable of accepting and

reporting for work with the employer during those weeks, claimant was actively seeking work during weeks 27-23 through 30-23.¹

However, because OAR 471-030-0036(5)(b)(D) limits a period of temporary unemployment to four weeks, and claimant's earnings never equaled or exceeded her WBA during any of the weeks at issue, she was not "temporarily unemployed" after week 30-23. Though claimant remained unemployed during weeks 31-23 through 35-23 while working for the employer and earning less than her WBA, she was required under OAR 471-030-0036(5)(a) to conduct five work-seeking activities each of those weeks. Because claimant did not conduct those activities, she was not actively seeking work during weeks 31-23 through 35-23.

For these reasons, claimant was actively seeking work during weeks 27-23, 28-23, and 30-23, and is eligible to receive unemployment insurance benefits those weeks on that basis. Claimant was not actively seeking work during weeks 31-23 through 35-23 and is ineligible to receive unemployment insurance benefits for those weeks.

DECISION: Order No. 23-UI-243995 is modified, as outlined above. Order No. 23-UI-243997 is set aside, as outlined above.

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

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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¹ The Department concluded that claimant was eligible for benefits during week 29-23 regardless of whether she was "temporarily unemployed" because she conducted work-seeking activities in accordance with OAR 471-030-0036(5)(a), and this was therefore not a week at issue. Transcript at 16-17.



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.

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