

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0324

Modified
Requests to Reopen Allowed
Eligible Weeks 06-21 through 17-21

PROCEDURAL HISTORY: On May 14, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not able to work, not available for work or not actively seeking work during the weeks including February 7, 2021 through May 1, 2021 (weeks 06-21 through 17-21) and was therefore ineligible to receive unemployment insurance benefits for those weeks and until the reason for the denial ended (decision # 61255). Claimant filed a timely request for hearing.

On January 18, 2023, notice was mailed to claimant that a hearing was scheduled for February 3, 2023. Claimant did not appear at the hearing and on February 3, 2023, ALJ McGorrin issued Order No. 23-UI-214849, dismissing claimant's request for hearing due to his failure to appear. On February 20, 2023, claimant filed a timely request to reopen the February 3, 2023 hearing.

On September 7, 2023, notice was mailed to claimant that a hearing was scheduled for September 19, 2023. Claimant did not appear at the hearing and on September 20, 2023, ALJ Enyinnaya issued Order No. 23-UI-236319, dismissing claimant's request to reopen and leaving Order No. 23-UI-214849 undisturbed. On September 21, 2023, claimant filed a timely request to reopen the September 19, 2023 hearing.

On October 23, 2023, notice was mailed to claimant that a hearing was scheduled for November 2, 2023. Claimant did not appear at the hearing and on November 3, 2023, ALJ Enyinnaya issued Order No. 23-UI-240312, dismissing claimant's request to reopen and leaving Order No. 23-UI-236319 undisturbed. On November 24, 2023, claimant filed a timely request to reopen the November 2, 2023 hearing.

On March 7, 2024, ALJ Micheletti conducted a hearing, and on March 12, 2024 issued Order No. 24-UI-249902, allowing claimant's requests to reopen the February 3, 2023, September 19, 2023, and November 2, 2023 hearings, canceling Orders No. 23-UI-214849, 23-UI-236319 and 23-UI-240312, and

affirming decision # 61255 on the merits. On March 29, 2024, claimant filed an application for review of Order No. 24-UI-249902 with the Employment Appeals Board (EAB).

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

EAB considered the entire hearing record. EAB agrees with the portion of Order No. 24-UI-249902 allowing claimant’s requests to reopen the February 3, 2023, September 19, 2023, and November 2, 2023 hearings. Pursuant to ORS 657.275(2), that portion of Order No. 24-UI-249902 is **adopted**. The rest of this decision addresses the merits of decision # 61255.

FINDINGS OF FACT: (1) On June 29, 2020, claimant filed an initial claim for unemployment insurance benefits. The Department determined the claim to be monetarily valid for regular unemployment insurance (regular UI) benefits.

(2) Prior to February 2021, claimant was employed as an inspector for a company that built and provided other services related to “challenge course” structures. Transcript at 10. The work involved climbing.

(3) On February 8, 2021, claimant suffered a shoulder injury while working. The injury rendered him temporarily incapable of performing his usual work, but his doctor cleared him to perform less physically demanding sedentary work full-time until he recovered. The employer had only part-time work available to claimant at this level of exertion.

(4) On February 11, 2021, claimant filed an additional claim for regular UI benefits effective January 31, 2021 (week 05-21). He thereafter filed weekly claims each week for the weeks of 05-21 until the week of May 9, 2021 through May 15, 2021 (week 19-21).¹

(5) The weeks of February 7, 2021, through May 1, 2021 (weeks 06-21 through 17-21) are the weeks at issue in the order under review. The Department paid claimant benefits for those weeks, except for week 13-21 which was not paid because claimant’s earnings that week exceeded his weekly benefit amount.²

(6) During the weeks at issue, claimant remained in contact with his employer and sought work from them within his temporary physical limitations. The employer offered claimant such work on a part-time basis, which claimant performed. Claimant did not otherwise seek work during the weeks at issue. Claimant’s labor market was the city where he resided.

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 facts will remain in the record.

² EAB has taken notice of these facts which are contained in Employment Department records. OAR 471-041-0090(1). 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 facts will remain in the record.

(7) During the weeks at issue, claimant had no restrictions on his availability to work except during the times he performed part-time work for his employer.

CONCLUSIONS AND REASONS: Claimant was able to work, available for work, and actively seeking work during the weeks at issue.

To be eligible to receive benefits, unemployed individuals must be able to work, available for work, and actively seek work during each week claimed. ORS 657.155(1)(c).

The order under review concluded that claimant was not able to work, available for work, or actively seeking work during the weeks at issue because his shoulder injury temporarily limited him to sedentary work, and claimant only sought such work from his usual employer. Order No. 24-UI-249902 at 6. The record does not support this conclusion.

Actively seeking work. To be eligible to receive benefits, unemployed individuals must actively seek work during each week claimed as defined by OAR 471-030-0036(5)(a) (December 8, 2019); ORS 657.155(1)(c). However, during a state of emergency declared by the Governor under ORS 401.165, the Department may waive, otherwise limit, or modify the requirements of OAR 471-030-0036. OAR 471-030-0071 (September 13, 2020). Paragraph (4) of Oregon Employment Department Temporary Rule for Unemployment Insurance Flexibility (March 8, 2020), <http://records.sos.state.or.us/ORSOSWebDrawer/Recordpdf/7604239>, provides the following:

The federal Families First Coronavirus Response Act permits states to temporarily modify their unemployment insurances laws regarding work search requirements on an emergency basis to respond to the spread of COVID-19 (Section 4102(b)). Because of the vital importance to public health and safety of mitigating the spread of COVID-19, social distancing measures must be maintained. Accordingly, effective the week ending March 28, 2020, notwithstanding OAR 471-030-0036, and unless otherwise notified in writing by the Employment Department, a person will be considered actively seeking work for purposes of ORS 657.155 if they are willing to look for work when state and local emergency declarations related to the coronavirus expire or otherwise are no longer in effect.

The Department notified claimants in writing that the temporary modifications to the work-seeking requirement would end the week of July 18, 2021 through July 24, 2021 (week 29-21).³ Accordingly, during the weeks at issue, the temporary rule modification was applicable. To be actively seeking work, claimant therefore had only to be willing to look for work when the COVID-19 emergency declarations expired. It can reasonably be inferred from claimant's efforts to continue working for the employer during the weeks at issue and to return to his usual work duties once recovered from his injury that claimant intended to continue working for the employer full-time, or seek other work, when the COVID-19 emergency declarations expired. Therefore, claimant met the applicable requirements for that time period to be considered actively seeking work.

³ EAB has taken notice of this fact which is contained in Employment Department records. OAR 471-041-0090(1). 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.

Able to work. An individual is considered able to work for purposes of ORS 657.155(1)(c) only if physically and mentally capable of performing the work the individual is actually seeking during all of the week. OAR 471-030-0036(2) (December 8, 2019).

The record shows that during the weeks at issue claimant sought only sedentary work, with his usual employer, that was within his temporary physical limitations. As discussed above, due to temporary rule modifications in place during this period due to the COVID-19 emergency, claimant was not required to seek other types of work or seek work at all to be eligible for benefits. It can be inferred from claimant performing sedentary work on a part-time basis as well as seeking such work full-time that he was physically and mentally capable of performing the work he sought during all of the weeks at issue. Therefore, claimant was able to work during the weeks at issue.

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

- (a) Willing to work full time, part time, and accept temporary work opportunities, during all of the usual hours and days of the week customary for the work being sought, unless such part time or temporary opportunities would substantially interfere with return to the individual’s regular employment; and
- (b) Capable of accepting and reporting for any suitable work opportunities within the labor market in which work is being sought, including temporary and part time opportunities; and
- (c) Not imposing conditions which substantially reduce the individual’s opportunities to return to work at the earliest possible time; and
- (d) Physically present in the normal labor market area as defined by section (6) of this rule, every day of the week * * *.

* * *

OAR 471-030-0036(3).

The record does not suggest that claimant imposed any limitations on the type of work schedule he was willing to accept, as claimant performed part-time work for his usual employer while seeking full-time work from them. It can therefore be inferred that claimant was willing to accept full time, part time, and temporary work opportunities during the weeks at issue. Further, as discussed above, claimant was capable of accepting and reporting for any suitable work opportunities, with suitability being determined largely by whether the work could be performed within claimant’s temporary physical limitations. Claimant’s limitation to “non-physical . . . non-climbing based work” was not so restrictive as to substantially reduce his opportunities to return to work at the earliest possible time, and this limitation was imposed by his medical providers rather than by claimant himself. Transcript at 11. Additionally, the record does not suggest that claimant was absent from his labor market area during the weeks at issue. Therefore, claimant was available for work during the weeks at issue.

For these reasons, claimant was able to work, available for work, and actively seeking work in accordance with the Department's rules during the weeks at issue, and is not ineligible to receive unemployment insurance benefits for weeks 06-21 through 17-21 on that basis.

DECISION: Order No. 24-UI-249902 is modified, as outlined above.

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

DATE of Service: May 13, 2024

NOTE: This decision modifies 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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