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

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EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0346

Affirmed
Request to Reopen Allowed
Late Request for Hearing Allowed
Eligible Week 21-23
Ineligible Weeks 22-23 through 26-23

PROCEDURAL HISTORY: On July 11, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work during the weeks of May 21, 2023, through July 1, 2023 (weeks 21-23 through 26-23) and therefore was not eligible to receive unemployment insurance benefits for those weeks (decision # 150657). On July 31, 2023, decision # 150657 became final without claimant having filed a request for hearing. On August 21, 2023, claimant filed a late request for hearing on decision # 150657. ALJ Kangas considered claimant's request, and on October 4, 2023, issued Order No. 23-UI-237669, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by October 18, 2023. On October 13, 2023, claimant filed a timely response to the appellant questionnaire. On February 2, 2024, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 23-UI-237669 was vacated and that a new hearing would be scheduled to determine whether to allow claimant's late request for hearing and, if so, the merits of decision # 150657.

On February 6, 2024, OAH served notice of a hearing scheduled for February 20, 2024. On February 20, 2024, claimant failed to appear at the hearing, and ALJ S. Lee issued Order No. 24-UI-248363, re-dismissing claimant's request for hearing due to his failure to appear and leaving decision # 150657 undisturbed. On February 29, 2024, claimant filed a timely request to reopen the hearing. On March 27, 2024, ALJ Enyinnaya conducted a hearing at which the Department failed to appear. On March 29, 2024, ALJ Enyinnaya issued Order No. 24-UI-251188, allowing claimant's request to reopen the hearing and late request for hearing, and modifying decision # 150657 by concluding that claimant was available for work during the week of May 21, 2023 through May 27, 2023 (week 21-23) and therefore eligible for benefits for that week, but was not available for work for the weeks of May 28, 2023 through July 1, 2023 (weeks 22-23 through 26-23) and therefore not eligible for benefits for those weeks. On April 5, 2024, claimant filed an application for review of Order No. 24-UI-251188 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 claimant’s reasonable control prevented him 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.

EAB considered the entire hearing record. EAB agrees with the portions of Order No. 24-UI-251188 concluding that claimant’s request to reopen the hearing, and late request for hearing, should be allowed. Pursuant to ORS 657.275(2), those portions of Order No. 24-UI-251188 are **adopted**. The remainder of this decision addresses the merits of decision # 150657, regarding claimant’s availability for work.

FINDINGS OF FACT: (1) Claimant filed an initial claim for unemployment insurance benefits on March 1, 2023. Claimant subsequently claimed benefits for the weeks of May 21, 2023, through July 1, 2023 (weeks 21-23 through 26-23). These are the weeks at issue. The Department paid claimant benefits for all of the weeks at issue.¹

(2) For approximately the last decade, claimant has worked as a marketing executive, and sought similar work during the weeks at issue.

(3) On May 26, 2023, claimant left Oregon for a trip to France, Italy, and Croatia. The trip was primarily for “personal” purposes, although claimant conducted some business during that time. Transcript at 18. For instance, claimant began an interview process with a potential employer while he was in Italy in late May 2023. That employer offered claimant a job in late June 2023, which claimant accepted.

(4) On July 4, 2023, claimant returned to Oregon. On July 10, 2023, claimant began working for the employer who offered him a job in late June 2023.

CONCLUSIONS AND REASONS: Claimant was available for work during week 21-23, but was not available for work during weeks 22-23 through 26-23.

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). Under OAR 471-030-0036(3)(i) (March 21, 2022), an individual is not available for work in any week claimed under ORS 657.155 if the individual resides or spends the major portion of the week:

(A) In Canada unless the individual is authorized to work in Canada;

(B) In a country not included in the Compact of Free Association with the United States of America; or

(C) outside of the United States, District of Columbia or any territory or political division that is directly overseen by the United States federal government; except,

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.

- (i) If the individual is the spouse or domestic partner of an individual stationed at a military base or embassy located outside the United States;
- (ii) Job opportunities exist on the military base or embassy for family members of those stationed there;
- (iii) The individual lives within a reasonable commuting distance to job opportunities at the military base or embassy; and
- (iv) The individual is willing to accept the conditions and terms of the available employment provided they are not inconsistent with ORS 657.195.

Claimant was in Europe from May 26, 2023, through July 4, 2023 on a trip that was primarily personal in nature. Claimant was not in Canada (or authorized to work in Canada) for any of this time, none of the countries in the Compact of Free Association are located in Europe,² and the record does not show that claimant's spouse or domestic partner was stationed at a military base or embassy outside of the United States. Therefore, claimant did not meet any of the exceptions under OAR 471-030-0036(3)(i), and was unavailable for each of the weeks at issue in which he spent the majority of the week outside of the United States. As the order under review correctly noted, claimant was out of the country for less than the majority of the week of May 21, 2023, through May 27, 2023 (week 21-23) and therefore was available for work that week. Order No. 24-UI-251188 at 6. Claimant was out of the country for the majority of each of the remaining weeks at issue, however (weeks 22-23 through 26-23), and therefore was not available for work for those weeks.

The order under review also concluded that claimant was not available for work during weeks 22-23 through 26-23 because OAR 471-030-0036(3)(d)(A) "requires that he actively seek work outside his normal labor market area to be considered 'available for work' in such circumstances," and claimant was not, during his trip, seeking work that was located in the areas he was visiting. Order No. 24-UI-251188 at 6. In his written argument, claimant took issue with this conclusion, explaining that he was actively applying and interviewing for jobs and conducting other work seeking activities while he was out of the country, and, further, that these activities led claimant to receive and accept a job offer. Claimant's Written Argument at 1.

While claimant's position is understandable, whether or not he was actually seeking work that was located in any of the places he was visiting is irrelevant to the outcome in this matter. In cases where an individual is outside of their normal labor market for the majority of any given week, OAR 471-030-0036(3)(d) *does* effectively require them to seek work in the labor market they are visiting in order to be considered available for work. However, meeting the requirement under OAR 471-030-0036(3)(d) does not nullify the application of OAR 471-030-0036(3)(i). Because claimant was out of the country for the majority of each of the remaining weeks at issue, and did not meet any of the exceptions under that subparagraph, claimant was not available for work *regardless* of why he was in Europe or what work-seeking activities he performed there.

² The countries included in the Compact of Free Association are the Republic of the Marshall Islands, the Federated States of Micronesia, and Palau. See <https://www.doi.gov/oia/compacts-of-free-association>.

For the above reasons, claimant was available for work during week 21-23 and therefore eligible for benefits for that week, but was not available for work during weeks 22-23 through 26-23, and therefore not eligible for benefits for those weeks.

DECISION: Order No. 24-UI-251188 is affirmed.

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

DATE of Service: May 17, 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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