

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0512

Affirmed
Ineligible Weeks 23-23 through 31-23

PROCEDURAL HISTORY: On August 4, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for and did not actively seek work from June 4 through July 29, 2023 (weeks 23-23 through 30-23) and was not eligible for benefits for those weeks and until the reasons for the denial ended (decision # 93256). Claimant filed a timely request for hearing. On August 15, 2023, the Office of Administrative Hearings (OAH) served a notice of that the hearing was scheduled for August 29, 2023. Claimant failed to appear for the hearing, and on August 31, 2023, ALJ Roberts issued Order No. 23-UI-234738, dismissing the hearing request due to claimant's failure to appear, leaving decision # 93256 undisturbed.

On September 7, 2023, claimant filed a timely request to reopen the August 29, 2023, hearing. On May 24, 2024, ALJ Mellor conducted a hearing, and on June 5, 2024, issued Order No. 24-UI-255806, allowing claimant's request to reopen and modifying decision # 93256 by concluding that claimant was available for work, but did not actively seek work, during the weeks from June 4 through August 5, 2023 (weeks 23-23 through 31-23) and was not eligible for benefits for those weeks. On June 20, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

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

EAB considered the entire hearing record. EAB agrees with the portions of Order No. 24-UI-255806 allowing claimant's request to reopen and concluding that claimant was available for work for the weeks at issue. Pursuant to ORS 657.275(2), those portions of Order No. 24-UI-255806 are **adopted**. The rest of this decision relates to whether claimant actively sought work during the weeks at issue.

FINDINGS OF FACT: (1) On June 4, 2023, claimant filed an initial claim for unemployment insurance benefits. The Department determined that claimant had a monetarily valid claim for benefits with a weekly benefit amount of \$202.¹

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,

(2) Claimant worked as food services worker for a catering company that contracted with a college to provide food services on the college's campus. During the school year, claimant worked full time for her employer. In the summer, claimant still worked for the employer but with no hours or significantly reduced hours depending on the week. This ranged typically from no hours worked one week, to approximately three hours of work the next week, then back to no hours worked the week after, in a "kind of up and down" manner. Transcript at 15.

(3) The college's summer period began on or about May 28, 2023, and ended August 25, 2023. From the start of this period of intermittent work and reduced hours, claimant knew that she would return to full time at the start of the new academic year. On August 28, 2023, the new school year began, and claimant returned to full time work for the employer.

(4) Claimant claimed benefits for the weeks of June 4 through August 5, 2023 (weeks 23-23 through 31-23). These are the weeks at issue. The Department did not pay claimant benefits for weeks 23-23 and 31-23. The Department paid claimant benefits for weeks 24-23 through 30-23.²

(5) During the weeks at issue, claimant remained in contact with her employer and was capable of accepting suitable work from them.

CONCLUSIONS AND REASONS: Claimant did not actively seek work during the weeks at issue and 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). Typically, to be actively seeking work, 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). However, these work search requirements do not apply if "the individual is temporarily unemployed as described in section (b)" of the administrative rule. OAR 471-030-0036(5)(a). For individuals who are temporarily unemployed, OAR 471-030-0036(5)(b) (March 25, 2022) 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;

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.

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 fact will remain in the record.

- (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.

Because the Department paid claimant benefits for weeks 24-23 through 30-23, it had the burden to prove that benefits should not have been paid as to those weeks. For weeks 23-23 and 31-23, the Department did not pay claimant benefits, so claimant had the burden to prove that the Department should have paid benefits. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976) (where the Department has paid benefits, it has the burden to prove benefits should not have been paid; by logical extension of that principle, where benefits have not been, paid claimant has the burden to prove that the Department should have paid benefits).

To determine whether claimant actively sought work for the weeks at issue, it is necessary to ascertain whether she was a temporarily unemployed individual within the meaning of OAR 471-030-0036(5)(b). If she was, then remaining in contact with her regular employer and being capable of accepting suitable work from them during the weeks at issue was sufficient to have met the actively seeking work requirement. If she was not a temporarily unemployed individual, the standard rule applies, and claimant was required to conduct at least five work-seeking activities per week, with two of the five work-seeking activities being a direct contact with an employer, to have met the actively seeking work requirement for the weeks at issue.

Claimant did not meet the criteria set forth by OAR 471-030-0036(5)(b) and therefore was not a temporarily unemployed individual during the weeks at issue. OAR 471-030-0036(5)(b)(C) provides that the Department will not consider an individual to be temporarily unemployed if “the length the individual is unemployed is longer than the period described in subsection (D) of this section[.]” Subsection (D)(ii) provides that the period of unemployment “[c]annot 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)[.]” Under subsection (B), an individual returns to work if the work the individual is returning to is full time or exceeds their weekly benefit amount.

Claimant’s period of unemployment began June 4, 2023, and the record shows that claimant returned to full time work on August 28, 2023, when the new school year began. Though during some of the weeks at issue claimant worked as many as three hours, the record fails to show that three hours of work in any

of those weeks would have exceeded her \$202 weekly benefit amount, and therefore none of the weeks at issue could be considered a return to work for purposes of subsections (D)(ii) and (B). Therefore, for purposes of subsections (D)(ii) and (B), claimant returned to work when full time work resumed for her on August 28, 2023. At the time the summer period began on or about May 28, 2023, and claimant began receiving no hours or significantly reduced hours each week, she knew that she would return to full time work on August 28, 2023. Accordingly, the length of time claimant was unemployed was greater than four weeks, as claimant expected when the period of unemployment began. Because the length of claimant's unemployment was greater than four weeks, claimant did not meet the criteria of OAR 471-030-0036(5)(b)(C) and (D)(ii). As such, claimant did not constitute a temporarily unemployed individual during the weeks at issue.

Because claimant was not a temporarily unemployed individual during the weeks at issue, the standard rule applies. Under the standard rule, to meet the actively seeking work requirement for the weeks at issue, claimant needed to have conducted at least five work-seeking activities each week, with two of the five work-seeking activities being a direct contact with an employer. The record fails to show that claimant met this requirement. At hearing, claimant testified that she conducted some work-seeking activities using Google, Indeed, Craigslist, and the like, but she did not identify which weeks she used those resources to seek work, or give specific details of each activity. Transcript at 20. Though claimant produced a written list of employers she sought work from and job types she sought, she similarly failed to specify which weeks she sought those particular jobs from those prospective employers. *See* Exhibit 3.

Because the evidence does not establish that claimant conducted at least five work-seeking activities, with two of the five work-seeking activities being a direct contact with an employer, during any week at issue, the record does not show that claimant was actively seeking work during those weeks. As such, claimant was not eligible for benefits for weeks 23-23 through 31-23.

DECISION: Order No. 24-UI-255806 is affirmed.

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

DATE of Service: July 19, 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 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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www.Oregon.gov/Employ/eab

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