

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0531

Modified
Eligible Weeks 05-24 through 09-24
Ineligible Week 10-24

PROCEDURAL HISTORY: On March 25, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not able to work from January 28 through March 9, 2024 (weeks 05-24 through 10-24) and was ineligible for benefits for those weeks (decision # L0003290072). Claimant filed a timely request for hearing. On July 2, 2024, ALJ Schmidt conducted a hearing at which the Department failed to appear, and on July 5, 2024, issued Order No. 24-UI-258214, affirming decision # L0003290072. On July 9, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) In October 2023, claimant suffered a knee injury for which he sought medical treatment. His doctor placed restrictions on his work activities, including limiting standing to no more than ten minutes at a time and no more than two hours total in a workday, and no lifting over five pounds. These restrictions were in place for a period including January 28 through February 29, 2024.

(2) Claimant had experience working in positions including driver, delivery person, cashier, and merchandise stocker. His most recent work was as a driver for a car dealership.

(3) On January 12, 2024, claimant filed an initial claim for benefits that was determined to be monetarily valid. Claimant claimed benefits for the weeks from January 28 through March 9, 2024 (weeks 05-24 through 10-24). These are the weeks at issue. The Department did not pay claimant benefits for the weeks at issue.

(4) During the weeks at issue, claimant was “looking for” positions that were the same or similar to those he had previously held. Audio Record at 14:48. Claimant believed that work in these positions could be performed, in some circumstances, within the restrictions imposed by his doctor. Claimant could not determine whether specific positions to which he applied would require physical exertion beyond his restrictions prior to applying.

(5) On March 1, 2024, claimant had knee surgery. During a period of recovery which lasted until March 18, 2024, claimant needed crutches to stand or walk and was precluded by his doctor from performing any kind of work.

CONCLUSIONS AND REASONS: Claimant was able to work during weeks 05-24 through 09-24, and unable to work during week 10-24.

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). An individual shall be considered able to work in a particular week 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) (March 25, 2022).

Claimant's physical ability to work was subject to restrictions during the weeks at issue. The order under review concluded that these restrictions rendered claimant unable to perform the work he sought during each of the weeks at issue. Order No. 24-UI-258214 at 2-3. The record does not support this conclusion, except for week 10-24.

Weeks 05-24 through 09-24. The restrictions on claimant's ability to work from January 28 through February 29, 2024, which most significantly included a five-pound limit on lifting and a ten-minute incremental and two-hour daily limit on standing and walking, would likely not preclude the performance of many sedentary jobs. Claimant testified that during the weeks at issue he "looked for" all the types of jobs he had previously held, to include driver, delivery person, cashier, and merchandise stocker. Audio Record at 14:48. These were entry-level positions unlikely to pose educational or experiential barriers to claimant obtaining them. He further testified that he *applied for* "driving jobs" where he would not "be on my feet as much." Audio Record at 15:50. It is reasonable to infer that many jobs that primarily or exclusively consisted of driving passenger or delivery vehicles would not necessarily involve so much lifting, standing, or walking, or impose other physical demands, that his limitations would be exceeded. Moreover, it is also reasonable to infer that a significant number of jobs in the fields of cashiering or stocking could accommodate, at least on a temporary basis, claimant's restrictions. This accommodation could be made by, for example, providing a stool or assistive device, and limiting the size and weight of merchandise handled. The Department, which did not participate in the hearing, did not provide evidence that would rebut these inferences.

That claimant could not discern through a job posting alone whether a particular position he applied to could be performed within his limitations, or whether accommodations would be available to him after hire, is insufficient to conclude that claimant would have been unable to perform the work if offered a job. Claimant's testimony suggested that he received responses from some prospective employers, but none explicitly rejected him as a candidate due to his physical limitations, and the reason they ultimately did not hire him was not disclosed to him. *See* Audio Record at 17:15. This further supports the inference that the jobs to which claimant applied could, in most or all instances, have been performed within his limitations. Accordingly, claimant has shown that, more likely than not, he was physically capable of performing the work he actually sought from January 28 through February 29, 2024.

However, claimant testified that he underwent surgery on March 1, 2024, and was restricted from performing any type of work during his recovery period, which lasted until March 18, 2024. Audio

Record at 10:32; 18:59. Claimant therefore was physically unable to perform the work he was seeking for part of the week of February 25, 2024, through March 2, 2024 (week 09-24). Nonetheless, an individual with a temporary disability for less than half of the week shall not be considered unable to work for that week, pursuant to OAR 471-030-0036(2) and (2)(a). As March 1, 2024 and March 2, 2024 constituted less than half of week 09-24, his temporary inability to perform any type of work those two days did not render him unable to work that week under the rule. Accordingly, claimant was able to work during weeks 05-24 through 09-24.

Week 10-24. As previously noted, claimant was recovering from surgery and precluded by his doctor from working in any capacity from March 1, 2024 until March 18, 2024. As this period included the entire week of March 3 through 9, 2024 (week 10-24), claimant was not physically capable of performing the work he was seeking that week. Accordingly, claimant was unable to work during week 10-24.

For these reasons, claimant was able to work during weeks 05-24 through 09-24, and eligible for benefits for those weeks. He was unable to work during week 10-24 and ineligible for benefits for that week.

DECISION: Order No. 24-UI-258214 is modified, as outlined above.

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

DATE of Service: July 31, 2024

NOTE: This decision reverses 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.