

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0575

Affirmed
Ineligible Weeks 02-24 through 10-24

PROCEDURAL HISTORY: On March 26, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant did not actively seek work for the weeks of January 7, 2024, through March 9, 2024 (weeks 02-24 through 10-24) and therefore was ineligible to receive unemployment insurance benefits for those weeks (decision # L0003407649). Claimant filed a timely request for hearing. On July 26, 2024, ALJ Kaneshiro conducted a hearing at which the Department failed to appear, and issued Order No. 24-UI-260485, affirming decision # L0003407649. On August 3, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On December 31, 2023, claimant filed an initial claim for unemployment insurance benefits. The Department determined that claimant's weekly benefit amount was \$445. Claimant subsequently claimed benefits for the weeks of January 7, 2024, through March 9, 2024 (weeks 02-24 through 10-24). These are the weeks at issue. The Department did not pay claimant benefits for the weeks of January 7, 2024, through January 13, 2024 (week 02-24) and March 3, 2024 through March 9, 2024 (week 10-24). The Department paid claimant benefits for all the remaining weeks at issue.¹

(2) Prior to the weeks at issue, claimant worked part time as a server and manager at a restaurant in the Hood River, Oregon area. In or around the last week of December 2023, the employer reduced claimant's hours due to a seasonal slowdown in business. Claimant continued to work for this employer during the weeks at issue but worked fewer hours. Before and during the weeks at issue, claimant never worked full time for this employer or earned more than her weekly benefit amount while working for them.

¹ EAB has taken notice of claimant's weekly benefit amount and information regarding which of the weeks at issue the Department paid claimant benefits. These facts 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 fact will remain in the record.

(3) During each of the weeks at issue, claimant contacted her regular employer between one and three times each week to attempt to secure additional shifts. Claimant also applied for other jobs during the weeks at issue and updated her resumé at least once during this period. However, claimant did not report any of these activities to the Department when claiming benefits for the weeks at issue because she clicked the “temporarily unemployed” box on her weekly claim forms, and therefore was not prompted by the Department’s claims system to provide information regarding her work-seeking activities. Claimant did not keep her own records of the efforts she made to seek work during the weeks at issue.

CONCLUSIONS AND REASONS: Claimant did not actively seek 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).

With few exceptions that do not apply here,² 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

² Besides the “temporarily unemployed” exception under OAR 471-030-0036(5)(b), additional exceptions exist to the actively seeking work requirements. *See* OAR 471-030-0036(5)(c), (d). However, those exceptions are not relevant to claimant’s circumstances and are not addressed here.

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.

This case presents two related issues. First, was claimant considered “temporarily unemployed” under OAR 471-030-0036(5)(b), such that she was not required to complete work-seeking activities other than remaining in contact with her regular employer, during some or all the weeks at issue? Second, if claimant was not temporarily unemployed, did she complete the required number of work-seeking activities for each of those weeks to be considered actively seeking work during those weeks? The record shows that the answer to both questions is, no.

First, claimant was not temporarily unemployed as defined by Oregon administrative rule during any of the weeks at issue. OAR 471-030-0036(5)(b) contains several factors which must all be met for an individual to be considered temporarily unemployed under the rule. The primary consideration in this case is OAR 471-030-0036(5)(b)(B), which requires that “[t]here is a reasonable expectation that they will be returning to work for their regular employer” and that “[t]he work the individual is returning to must be full time or pay an amount that equals or exceeds their weekly benefit amount.” The record shows that claimant never worked full time for the employer or earned more than her weekly benefit amount, even prior to the weeks at issue. Likewise, claimant did not assert at hearing, and the record does not otherwise show, that she expected to eventually return to full time work or enough hours that she would earn more than her weekly benefit amount. Therefore, claimant did not meet the requirement under OAR 471-030-0036(5)(b)(B) and was not temporarily unemployed for any of the weeks at issue. As a result, claimant was required to perform five work-seeking activities during each week to be considered actively seeking work.

Next, claimant did not perform the work-seeking activities required for her to have been considered actively seeking work for any of the weeks at issue. The record shows that claimant contacted her regular employer between one and three times during each of the weeks at issue, that she also contacted other employers to look for work during some of those weeks, and that she updated her resumé at least once during those weeks. All these activities are considered work-seeking activities under OAR 471-030-0036(5)(a), and most would probably constitute direct contacts under OAR 471-030-0036(5)(a)(B). However, claimant did not keep records of these activities, and was therefore unable to describe at hearing which five work-seeking activities she completed during each of the weeks at issue. As such, the record is insufficient to show that, for any of the weeks at issue, claimant performed at least five work-seeking activities, including at least two direct contacts.

Because claimant was not temporarily unemployed during any of the weeks at issue and did not show that she performed at least five work-seeking activities, including two direct contacts, during any of those weeks, claimant did not actively seek work during the weeks at issue and was not eligible for benefits for those weeks.

DECISION: Order No. 24-UI-260485 is affirmed.

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

DATE of Service: August 23, 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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