

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0627

Affirmed
Ineligible Weeks 11-24 through 29-24

PROCEDURAL HISTORY: On May 10, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not able to work from March 10 through 16, 2024 (week 11-24) and was ineligible for benefits for that week and until the reason for the denial ended (decision # L0004017842). Claimant filed a timely request for hearing.¹ On August 8, 2024, ALJ Janzen conducted a hearing, and on August 9, 2024, issued Order No. 24-UI-262051, modifying decision # L0005250414 by concluding that claimant was not able to work from March 10 through July 20, 2024 (weeks 11-24 through 29-24) and was ineligible for benefits for those weeks. On August 28, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

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

FINDINGS OF FACT: (1) In early 2023, claimant suffered injuries to both shoulders that limited his ability to work. Claimant customarily worked in machine maintenance. Claimant eventually separated from work for this reason and pursued a claim for workers' compensation that was still pending as of the hearing date. Claimant expected to have surgery on both shoulders if and when his workers' compensation claim succeeded.

(2) On March 13, 2024, claimant filed an initial claim for unemployment insurance benefits. Claimant claimed benefits for the weeks from March 10 through July 20, 2024 (weeks 11-24 through 29-24). These are the weeks at issue. The Department did not pay claimant benefits for the weeks at issue.

(3) Claimant's condition and physical abilities remained essentially the same from the time of the injury through the weeks at issue. Claimant was unable to lift more than 10 to 15 pounds and was restricted in

¹ On July 19, 2024, the Department issued decision # L0005250414 which amended and replaced decision # L0004017842 but contained the same conclusions. Claimant's request for hearing was applied to the amended administrative decision.

his ability to reach, push, and otherwise engage in arm movements because such movements caused him pain.

(4) During the weeks at issue, claimant considered seeking less-specialized work that would be less physically demanding than machine maintenance work but decided that it would not pay enough and therefore did not seek such work. Claimant wanted to seek work that he “was skilled for” and “thought that he could possibly perform without causing further injury to [himself],” but was “not sure” what jobs fit those criteria because he “hadn’t really tried it yet.” Audio Record at 14:40.

(5) As of August 8, 2024, claimant had accepted a job offer as a machinist helper that he believed would primarily involve operating a forklift. However, he planned to immediately leave that job if he felt it posed a risk of further injuring his shoulders once the job began.

CONCLUSIONS AND REASONS: Claimant was not able to 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). 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 except that an individual with an occasional and temporary disability for less than half of the week shall not be considered unable to work for that week. OAR 471-030-0036(2), (2)(a) (March 25, 2022).

During the weeks at issue, claimant sought work consistent with his training and experience in machine maintenance. Though claimant believed that he may have been able to perform less physically demanding entry-level work in other fields, claimant did not seek such work because he felt that it did not pay enough. Through his testimony that he only sought work for which he was skilled, and which paid enough to sustain his standard of living, claimant implied that he sought only the machine maintenance work which he had customarily performed. *See* Audio Record at 14:40. Because the ability to work analysis must focus only on the type of work claimant was actually seeking during the weeks at issue, the issue presented is whether claimant was physically capable of performing machine maintenance work.

At hearing, the ALJ asked claimant whether he believed he was capable of performing machine maintenance work during the weeks at issue. Claimant’s answer was equivocal, testifying that it was “kind of a yes and no” and that he was not sure whether any jobs existed in that field that could accommodate his significant lifting and reaching restrictions. Audio Record at 14:10. Even though claimant accepted an offer of work either during or after the weeks at issue, he had not yet attempted the work as of the hearing date and planned to quit the job immediately if he believed it posed a risk of worsening his condition. Further, claimant described “feeling pain” at his most recent job when trying to access tools, open shop doors, or reach into machines. Audio Record at 21:00. It can reasonably be inferred that such basic movements would be required in nearly any job in this field of work, including the new job he was planning to start.

As the record does not show that claimant’s condition improved since he was injured, claimant remained unable during each of the weeks at issue to perform tasks reasonably expected to be part of any work in

the field of machine maintenance. Therefore, claimant has not met his burden of showing that he was physically capable of performing the work he was actually seeking during any of the weeks at issue.²

For these reasons, claimant was not able to work during weeks 11-24 through 29-24 and is ineligible for benefits for those weeks.

DECISION: Order No. 24-UI-262051 is affirmed.

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

DATE of Service: September 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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² 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. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).



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

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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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