

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0682

Reversed
Ineligible Week 29-24

PROCEDURAL HISTORY: On August 1, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work from July 14 through 20, 2024 (week 29-24) and was ineligible for benefits for that week (decision # L0005475401). Claimant filed a timely request for hearing. On September 3, 2024, ALJ Frank conducted a hearing, and on September 11, 2024, issued Order No. 24-UI-265659, reversing decision # L0005475401 by concluding that claimant was available for work during week 29-24 and was eligible for benefits for that week. On September 25, 2024, the Department filed an application for review with the Employment Appeals Board (EAB).

WRITEN ARGUMENT: EAB considered the Department's argument in reaching this decision.

FINDINGS OF FACT: (1) On July 1, 2024, claimant filed an initial claim for benefits. The Department determined that the claim was monetarily valid. Thereafter, claimant claimed benefits for the week of July 14 through 20, 2024 (week 29-24). This is the week at issue. The Department did not pay claimant benefits for the week at issue.

(2) On July 14, 2024, claimant moved from Oregon to Australia. Claimant had a visa that permitted her to work in Australia for up to three years. Claimant sought work only in Australia during the week at issue. Claimant was not the spouse or domestic partner of an individual stationed at a military base or embassy located outside the United States.

(3) Australia is a country not included in the Compact of Free Association with the United States of America.¹

¹ EAB has taken notice of this fact which is a generally cognizable fact. 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.

CONCLUSIONS AND REASONS: Claimant was not available for work during the week at issue.

To be eligible for benefits for a week, unemployed individuals must be able to work, available for work, and actively seek work. ORS 657.155(1)(c).

OAR 471-030-0036(3) (March 21, 2022) provides, in relevant part:

(i) 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,

(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 testified that on July 14, 2024, she moved to Australia and resided there through at least July 20, 2024. Audio Record at 10:28. The order under review concluded that claimant was nonetheless available for work during the week at issue because Australia became claimant's new labor market and she was legally authorized to work there and actively sought work there during the week. Order No. 24-UI-265659 at 3. While the record supports that claimant resided in Australia during the week at issue, the order failed to analyze whether OAR 471-030-0036(3)(i)(B) or (C) precluded a finding of availability for work.

Australia is a country not included in the Compact of Free Association with the United States of America. Further, claimant testified that her partner "is a public employee at a university and is working [in Australia]." Audio Record at 13:08. It is reasonable to infer from this testimony that claimant was not the spouse or domestic partner of an individual stationed at a military base or embassy located outside the United States. Accordingly, pursuant to OAR 471-030-0036(3)(i)(B) and (C), claimant was

considered unavailable for work during the week at issue due to residing in Australia for the majority of the week, regardless of her work seeking efforts there.

For these reasons, claimant was not available for work during the week of July 14 through 20, 2024 (week 29-24) and is ineligible for benefits for that week.

DECISION: Order No. 24-UI-265659 is set aside, as outlined above.

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

DATE of Service: October 18, 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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