

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0254-R**

*On Reconsideration*  
*Reversed & Remanded*

**PROCEDURAL HISTORY:** On January 31, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from December 30, 2018 to January 26, 2019 (decision # 85852). Claimant filed a timely request for hearing. On February 28, 2019, ALJ Jarry conducted a hearing and issued Order No. 19-UI-125475, affirming the Department's decision. On March 7, 2019, claimant filed an application for review with the Employment Appeals Board (EAB). On April 11, 2019, EAB issued EAB Decision 2019-EAB-0254, affirming Order No. 19-UI-125475. On April 13, 2019, claimant filed a request for reconsideration. This decision is issued pursuant to EAB's authority under ORS 657.290(3).

**FINDINGS OF FACT:** (1) Claimant previously worked as a driver for Sovereign Medical Transport. At all relevant times, claimant was a Social Security (SSI) recipient. Claimant's income in 2018 exceeded SSI benefit income caps, and she had to repay Social Security and the IRS as a result.

(2) Prior to entering into an employment relationship with Sovereign, claimant discussed her situation with Sovereign. Claimant and Sovereign agreed that claimant would work available hours in 2018, but that her hours would be reduced after the first of the year so that she could work limited hours for Sovereign without affecting her eligibility for SSI. Claimant thought she could work around 20 to 30 hours a week and earn around \$17,000 from work without affecting her SSI benefits, and planned to keep within those parameters while working for Sovereign in 2019.

(3) Prior to January 4, 2019, claimant's employment with Sovereign ended. On January 4, 2019, claimant filed an initial claim for unemployment insurance benefits. She filed weekly claims for benefits from December 30, 2018 through January 26, 2019 (weeks 1-19 through 4-19), the weeks at issue.

**CONCLUSIONS AND REASONS:** On reconsideration, Order No. 19-UI-125475 is reversed and this matter remanded for further proceedings.

To be eligible to receive benefits, unemployed individuals must be available for work during each week claimed. ORS 657.155(1)(c). For an individual to be considered "available for work" for purposes of

ORS 657.155(1)(c), in pertinent part, the individual must be willing to work full time and refrain from imposing conditions that substantially reduce the individual's opportunities to return to work at the earliest possible time. *See* OAR 471-030-0036(3).

The Order under review, which EAB adopted, concluded that claimant was not available for work during the weeks at issue because “she was unwilling to work more than 30 hours per week beginning January 1, 2019, because it would affect her eligibility for Social Security benefits.” *See* Order No. 19-UI-125475 at 2. The evidence in the record does not support that conclusion. The evidence at the hearing conclusively shows only that claimant was not willing to work more than 30 hours a week for *Sovereign* beginning January 1, 2019 because she and *Sovereign* had mutually agreed to modify claimant’s work schedule in a way that would allow her to maximize her work hours without affecting her eligibility for SSI. Although the fact that claimant wanted to modify her work schedule with *Sovereign* is relevant to the issue in this case, it is not dispositive of claimant’s availability to work for a different employer after her employment with *Sovereign* ended and her circumstances changed. The record fails to show whether claimant was or would have been willing to work full time for a different employer after her employment with *Sovereign* ended. Substantial evidence therefore does not show that claimant was not available for work, and additional proceedings are required.

On remand, the record must be developed as to the situation as it existed between December 30<sup>th</sup> and January 26<sup>th</sup>, when claimant no longer worked for *Sovereign* and her circumstances had changed. The record should be developed independent of claimant’s agreement with *Sovereign*, for example, whether claimant was willing to work full time with a different employer during the weeks at issue, or what she would have done if offered full time work or work in an amount that would exceed the SSI income cap such that it would cause a reduction in her SSI benefits or trigger another repayment. Claimant testified that she took the first job she was offered after becoming unemployed, with *First Transit*, but the record fails to show whether that job was full time, part time, or temporary employment, or whether the job with *First Transit* was likely to affect her SSI benefits. If the work with *First Transit* was not full time, the record fails to show if claimant sought additional work or was satisfied to work only part time. The record fails to show if claimant would have accepted employment with *First Transit* or any other employer if the work was full time or would affect her SSI benefits. Finally, with respect to claimant’s work search records in Exhibit 1, the record shows claimant applied for a substantial number of jobs during the weeks at issue, but entirely fails to show whether any of the jobs claimant listed in her work search records were for full time work, or if claimant instead limited her work search only to part time or temporary jobs that were unlikely to affect her SSI benefits.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because the record was only developed as to claimant’s agreement with *Sovereign* and willingness to work full time for *Sovereign*, but was not developed as to whether claimant was or was not willing to work full time with a different employer after her employment with *Sovereign* ended, the record does not show whether or not claimant was available for work during the weeks at issue. Order No. 19-UI-125475 is therefore reversed, and this matter is remanded for development of the record.

**DECISION:** On reconsideration, Order No. 19-UI-125475 is set aside, and this matter remanded for further proceedings consistent with this order.

J. S. Cromwell and D. P. Hettle;  
S. Alba, not participating.

**DATE of Service: April 29, 2019**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 19-UI-125475 or return this matter to EAB. Only a timely application for review of the subsequent Order will cause this matter to return to EAB.

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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 Asuntos Laborales. Si no está de acuerdo con esta decisión, puede presentar una Petición 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 ໄດ້ ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄໍາຕັດສິນນີ້.

**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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