

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0279**

*Affirmed*  
*Ineligible Weeks 3-19 through 5-19*

**PROCEDURAL HISTORY:** On February 5, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was ineligible for benefits because she did not actively seek work from January 13, 2019 to January 26, 2019 (decision # 80136). On February 6, 2019, the Department served notice of another administrative decision concluding claimant was ineligible for benefits because she did not actively seek work from January 27, 2019 to February 2, 2019 (decision # 60924). Claimant filed timely requests for hearing on both decisions. On March 6, 2019, ALJ Wyatt conducted a consolidated hearing, and on March 8, 2019 issued Order Nos. 19-UI-126020 and 19-UI-126021, affirming the Department's decisions. On March 18, 2019, claimant filed applications for review of both decisions with the Employment Appeals Board (EAB). Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Order Nos. 19-UI-126020 and 19-UI-126021. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2019-EAB-0279 and 2019-EAB-0280).

**FINDINGS OF FACT:** (1) At all relevant times, Pathfinders of Oregon employed claimant.

(2) Prior to January 4, 2019, claimant was the victim of a sexual assault and attempted murder. On January 4, 2019, claimant asked her employer for time off work. The employer approved her time off request. Claimant subsequently requested a leave of absence under the Family Medical Leave Act (FMLA). The employer approved her request for the period of January 14, 2019 through February 11, 2019.

(3) Claimant filed weekly claims for unemployment insurance benefits for the weeks of January 13, 2019 through February 2, 2019 (weeks 3-19 through 5-19), the weeks at issue.

(4) At all relevant times during the weeks at issue, claimant and her minor child were not safe in their home. They went into hiding in a protective home. Claimant's child was not able to attend school, and claimant was not able to return to her residence.

(5) Claimant maintained contact with her employer throughout the weeks at issue as the employer worked to ensure claimant would be safe when she returned to work. Because she had been assaulted and was endangered as a result, she was unable to seek work during the weeks at issue beyond maintaining contact with her employer.

**CONCLUSIONS OF LAW:** Claimant did not actively seek work during the weeks at issue.

ORS 657.155(1)(c) states, “An unemployed individual shall be eligible to receive benefits with respect to any week only if” she “is able to work, available for work, and is actively seeking and unable to obtain suitable work.” At issue in this case is whether claimant actively sought work during the weeks at issue, January 13, 2019 through February 2, 2019 (weeks 3-19 through 5-19).

The requirements for actively seeking work under ORS 657.155(1)(c) include conducting “at least five work seeking activities per week” including two that are a “direct contact with an employer that might hire the individual.” OAR 471-030-0036(5)(a). Those provisions do not apply to individuals who are “temporarily unemployed” because “they were separated from their employer” due to “a lack of work”; all other temporarily unemployed individuals must conduct five work seeking activities per week as a condition of receiving benefits. OAR 471-030-0036(5)(b).

In this case, claimant did not conduct five work seeking activities per week. She only conducted one work seeking activity per week by maintaining direct contact with her current employer. Nor was claimant exempt from seeking work, because although she was temporarily separated from her employer during the weeks at issue her temporary separation occurred because she requested and was allowed a leave of absence, and it was not due to a lack of work. For those reasons, claimant did not actively seek work during the weeks at issue. She therefore must be deemed ineligible for benefits for the weeks of January 13, 2019 through February 2, 2019 (weeks 3-19 through 5-19).

Claimant asserted at the hearing and in written argument that she should not be deemed ineligible for benefits because the law protects individuals who are victims of sexual assault from being disqualified from receiving unemployment insurance benefits. However, the law only protects assault victims from disqualification under specific provisions of the law, and, unfortunately, claimant’s case does not fall under those provisions. Specifically, ORS 657.176(12) protects claimant from being disqualified for benefits under ORS 657.176(2)(c), (d), or (e) for voluntarily quitting work, failing to apply for suitable work when referred by the Employment Department, or failing to accept suitable work when it is offered because of domestic violence, stalking, or sexual assault. Claimant is protected from disqualification for those reasons, and she has not been deemed disqualified under ORS 657.176(2)(c), (d), or (e).

ORS 657.176(12) also protects claimant – and every victim of domestic violence, stalking, or sexual assault – from being considered “unavailable for purposes of ORS 657.155.” However claimant has not been considered “unavailable for purposes of ORS 657.155” despite the limitations her circumstances placed on her availability for work during the weeks she claimed unemployment benefits. She has, however, been considered not to be “actively seeking and unable to obtain suitable work” under ORS 657.155. That is because ORS 657.176(12) does not exempt individuals who were the victim of domestic violence, stalking, or sexual assault from having to actively seek work under ORS 657.155. It only exempts individuals from having to be “available” for work. Under principles of statutory construction, the law says that if the Oregon legislature had intended to provide additional protections

for individuals who are the victim of sexual assault by exempting them from having to actively seek work as a condition of being eligible for unemployment insurance benefits, the legislature would have done so. *See* ORS 174.010 (the general rule for construction of statutes “is simply to ascertain and declare what is . . . contained therein, not to insert what had been omitted . . .”).

Unfortunately the legislature has not provided such protections, and there is no law, rule, or legal theory under which claimant may be deemed eligible for benefits even though she did not actively seek work as required by ORS 657.155(1)(c) and OAR 417-030-0036(5). Claimant therefore must be denied benefits even though her circumstances as the victim of a sexual assault and attempted murder prevented her from seeking work during the weeks at issue.

**DECISION:** Order Nos. 19-UI-126020 and 19-UI-126021 are affirmed.

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

**DATE of Service:** April 12, 2019

**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](http://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

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## 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 ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

**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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