

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0318**

*Affirmed*  
*Eligible - Weeks 02-19 through 10-19*

**PROCEDURAL HISTORY:** On February 12, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work beginning January 6, 2019 and continuing until the reason for the denial ended (decision # 81851). Claimant filed a timely request for hearing. On March 13, 2019, ALJ Wyatt conducted a hearing, and on March 21, 2019, issued Order No. 19-UI-126799, concluding claimant was available for work during the weeks of January 6 through March 9, 2019. On March 25, 2019, the employer filed an application for review with the Employment Appeals Board (EAB).

The employer submitted written argument to EAB, but failed to certify that it provided a copy of its argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we considered the entire record, but did not consider the employer's argument when reaching this decision.

**FINDINGS OF FACT:** (1) Go Green Portland, dba as 1-800-GotJunk?, employed claimant as a general laborer from April 16, 2018 to January 15, 2019. The employer did not assign claimant to work evening shifts because those shifts required employees to drive the employer's vehicles and claimant had a suspended driver's license.

(2) On January 7, 2019, claimant filed an initial claim for unemployment insurance benefits. He claimed and received benefits or waiting week credit for the weeks including January 6 through February 9, 2019 (weeks 02-19 through 06-19). He claimed but was not paid benefits for the weeks including February 10 through March 9, 2019 (weeks 07-19 through 10-19). Weeks 02-19 through 10-19 are the weeks at issue.

(3) During the weeks at issue, claimant sought warehouse work, machinist work, construction work, and junk removal work. Claimant's labor market area was Aloha, Beaverton, Hillsboro, Lake Oswego, SW Portland, Tigard and Tualatin, Oregon. In claimant's labor market, the customary days and hours for warehouse and machinist work were all days and all shifts, and for construction and junk removal work were Mondays through Saturdays, day shifts.

(4) During the weeks at issue, claimant was willing to work and had access to transportation necessary for reporting to any work opportunity within his labor market. Although claimant had a suspended driver's license, public transportation generally was available and when it was not, claimant's girlfriend was willing and able to drive him to and from work.

**CONCLUSIONS AND REASONS:** Claimant was available for work during all of 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 must meet certain minimum requirements to be considered "available for work" for purposes of ORS 657.155(1)(c). OAR 471-030-0036(3) (April 1, 2018). Among those requirements are that the individual be willing to work and capable of reporting to full time, part time and temporary work opportunities throughout the labor market, and refrain from imposing conditions that limit the individual's opportunities to return to work at the earliest possible time. *Id.*

Where the Department seeks to deny benefits it has already paid, the Department has the burden to show that claimant was not eligible to receive those benefits *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976). By extension of that principle, where the Department has denied benefits for weeks claimed without paying them, claimant has the burden to show that he was eligible for benefits for those weeks. In this case, the Department gave claimant waiting week credit or paid him benefits for the first five weeks at issue but denied claimant benefits for the remaining weeks claimed. Therefore, the Department has the burden with respect to the first five weeks, and claimant has the burden with respect to the last four weeks.

At hearing, the Department's witness asserted that claimant was not available for all of the work he was seeking during the weeks at issue because claimant had a suspended driver's license, public transportation generally was not available during graveyard shifts, and, for that reason, claimant would not have been capable of reporting for all warehouse and machine operator graveyard shifts. Audio Record ~ 13:00 to 17:00. The witness also asserted that claimant had told the employer in December of 2018 that he would not work on specified days and during evening shifts. Audio Record ~ 12:15 to 13:00. However, claimant credibly testified that during each of the weeks at issue he was willing to work and capable of reporting for any work opportunities he sought on all days of the week and for all shifts, and that if public transportation was unavailable, his girlfriend had been willing and capable of driving him to and from any work opportunity. Audio Record ~ 21:00 to 24:00; 33:30 to 34:00. And the employer's witness admitted that she recalled that claimant had told her in December of 2018 that he was willing to work any available shifts. Audio Record ~ 33:00 to 33:30. Viewed objectively, and regardless of which party had the burden of proof, the record shows that claimant was willing to work and capable of reporting to any full time, part time and temporary work opportunities throughout his labor market during all of the weeks at issue.

Claimant was available for work during the weeks at issue and is eligible for benefits for those weeks if otherwise qualified.

**DECISION:** Order No. 19-UI-126799 is affirmed.

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

**DATE of Service: April 25, 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

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 desisyong ito.

## 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 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.

**Employment Appeals Board - 875 Union Street NE | Salem, OR 97311**  
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711  
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