

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0346**

*Modified*  
*Eligible Weeks 03-19 through 05-19*

**PROCEDURAL HISTORY:** On February 7, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant did not actively seek work during the period of January 13, 2019 through February 2, 2019 (decision # 130857). Claimant filed a timely request for hearing. On March 12, 2019, ALJ Murdock conducted a hearing, and on March 19, 2019 issued Order No. 19-UI-126658, concluding that claimant actively sought work from January 13, 2019 through January 26, 2019, but did not actively seek work from January 27, 2019 through February 2, 2019. On April 3, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision.

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the ALJ's findings and analysis with respect to the conclusion that claimant actively sought work from January 13, 2019 through January 26, 2019 (weeks 03-19 through 04-19) are **adopted**. The remainder of this decision addresses whether claimant actively sought work during the week of January 27, 2019 through February 2, 2019 (week 05-19).

**FINDINGS OF FACT:** (1) As of December 28, 2018, claimant was working at two separate restaurant jobs. After that date, claimant continued to work at one of the restaurant jobs while being temporarily laid off from the other job.

(2) On January 24, 2019 (during week 04-19), claimant returned to work at the job from which he had been temporarily laid off. Claimant was scheduled to work that day and again on February 1, 2019 (during week 05-19).

(3) Sometime before February 1, 2019, the employer informed claimant that he was not going to work on February 1, 2019, as scheduled, because its business continued to be slow and it did not have sufficient reservations to justify having him come in. However, claimant expected to be scheduled for work in the upcoming weeks, beginning week 06-19 and continuing thereafter.

(4) During week of January 27, 2019 through February 2, 2019 (week 05-19), claimant maintained contact with both of his regular employers for purposes of seeking work, he contacted two other employers for work and he accessed various websites to look for work.

(5) Beginning the week of February 3, 2019 (week 06-19) and thereafter, claimant worked at the restaurant job where his shift was cancelled on February 1, 2019.

**CONCLUSIONS AND REASONS:** Claimant actively sought work from January 13, 2019 through February 2, 2019 and is eligible to receive benefits for those weeks.

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). For purposes of ORS 657.155(1)(c), an individual is actively seeking work when doing what an ordinary and reasonable person would do to return to work at the earliest opportunity. OAR 471-030-0036(5)(a)(April 1, 2018). With limited exceptions, individuals are "required to conduct at least five work seeking activities per week, with at least two of those being direct contact with an employer who might hire the individual." *Id.* An individual who is temporarily unemployed is considered to be actively seeking work by remaining in contact with and being capable of accepting and reporting for any suitable work with their regular employer for a period no greater than four weeks between the week the individual became temporarily unemployed and the week the individual returns to work for their regular employer. OAR 471-030-036(5)(b)(A); OAR 471-030-0036(5)(b)(D)(ii). For an individual to be considered "temporarily unemployed," there must be a reasonable expectation that the individual will be returning to work with their regular employer, and the work returned to must be full time or pay an amount that equals or exceeds the individual's weekly benefit amount. OAR 471-0340-0035(5)(b)(B).

Order No. 19-UI-126658 concluded that claimant was not eligible to receive benefits for period of January 27, 2019 through February 2, 2019 (week 05-19). The order reasoned that claimant's period of temporary unemployment began on December 29, 2018 (week 52-18), and the four weeks in which he was considered to have actively sought work by remaining in contact with his regular employer ended as of the end of week 04-19. Order No. 19-UI-126658 at 3. The order further reasoned that since claimant contacted only one employer in addition to his regular employers in week 05-19, he did not show that he engaged in at least five work seeking activities, as he was required to do if he was not temporarily unemployed. With respect to week 05-19, however, Order No. 19-UI-126658 is not supported by substantial evidence, and claimant is eligible to receive benefits for that week.

Order No. 19-UI-126658 was correct that the initial four week period of time that claimant would be considered to have actively sought work by remaining in contact with his regular employer ended as of the end of week 04-19. On January 24, 2019, which was in week 04-19, claimant returned to his regular employer's work schedule and performed work for it on that day, which ended the period of temporary unemployment that began on December 29, 2018. However, when the employer told claimant that his upcoming shift scheduled on February 1, 2019 (in week 05-19) was canceled, but continued scheduling him for shifts in week 06-19 and thereafter, claimant had a reasonable expectation of returning to work for that regular employer in week 06-19. As of week 06-19, when both of his jobs were aggregated, claimant reasonably expected to return to full-time work or to receive aggregate pay that was equal to or exceeded his weekly benefit amount. The record therefore shows that after claimant returned to work in

week 04-19, his regular employer rendered him temporarily unemployed for a second time for a period that included week 05-19. Since claimant maintained contact with his regular employer in week 05-19, he satisfied the requirement that he actively seek work and is eligible to receive benefits for that week.

Alternatively, even if claimant was not temporarily unemployed for a second time during week 05-19, claimant engaged in five work seeking-activities in that week. Those activities were direct employer contacts with both of his regular employers, direct contacts with two additional employers as well as looking for work on various internet job sites. Since it appears that claimant engaged in at least five work seeking activities, including at least two direct employer contacts, Order No. 19-UI-126658 was incorrect in its findings as to the number and types of work seeking activities in which claimant engaged in week 05-19. Claimant therefore met the requirements of an active work search for week 05-19 even if he was not temporarily unemployed during that week.

Claimant actively sought work during the period of January 13, 2019 through February 2, 2019, weeks 03-19 through 05-19. Claimant is eligible for benefits for those weeks.

**DECISION:** Order No. 19-UI-126658 is modified, as outlined above.

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

**DATE of Service:** May 7, 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.

**Employment Appeals Board - 875 Union Street NE | Salem, OR 97311**  
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