

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0468**

*Modified*  
*Benefits Allowed in Part, Denied in Part*

**PROCEDURAL HISTORY:** On April 16, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from February 24, 2019 until the reason for the denial had ended (decision # 114459). Claimant filed a timely request for hearing. On May 13, 2019, ALJ Wymer conducted a hearing and issued Order No. 19-UI-129816, concluding claimant was not available for work from February 24, 2019 through May 11, 2019. On May 16, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) In 2019, claimant worked full-time, but remotely, in Bend, Oregon, as an accountant for a CPA firm based in Portland, Oregon. Claimant also worked part-time as the head high school baseball coach for the Crook County School District. Claimant's coaching job, which he had held for five years, typically ran from January through May, and required that he be present for practices and games, Monday through Friday from 3:30 p.m. to 6:00 p.m. When claimant initially interviewed with his accounting employer, he disclosed his coaching activities so it would be aware of them. Claimant's accounting employer accommodated claimant's coaching activities by allowing him to work early on weekdays and on weekends when necessary. In February 2019, claimant was separated from work with his accounting employer.

(2) On February 26, 2019, claimant filed an initial claim for unemployment insurance benefits. He claimed, but was not paid, benefits for the weeks including February 24, 2019 through May 11, 2019 (weeks 09-19 through 19-19), the weeks at issue.

(3) During the weeks at issue, claimant sought work as an accountant. In claimant's labor market of Bend, Oregon, the days and hours customary for work as an accountant were Monday through Friday, 8:00 a.m. to 5:00 p.m.

(4) On April 4, 2019, a Department representative contacted claimant concerning his benefit claims. The representative was aware of claimant's coaching employment and asked claimant if he would be willing to accept accounting work that required that he work until 5:00 p.m. Claimant initially replied, "I guess not," explaining that the CPA firms he had worked for in the past had been flexible, and admitting that

he had discussed his coaching with prospective employers. Audio Record ~ 24:25 to 26:45. However, after the representative read claimant a Department advisory that he had to be willing to accept accounting work Monday through Friday from 8:00 a.m. to 5:00 p.m. to be eligible for benefits, claimant replied that if offered a job he required that he work until 5:00 p.m., he would accept it, and quit his coaching job, explaining that he could not make a living as a baseball coach. Claimant had four capable assistant coaches, one of whom could take over as head coach immediately if necessary.

**CONCLUSIONS AND REASONS:** Claimant was not available for work from February 24 to April 6, 2019. However, claimant was available for work from April 7 through May 11, 2019.

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), they must be:

- (a) Willing to work full time, part time, and accept temporary work opportunities, during all of the usual hours and days of the week customary for the work being sought, unless such part time or temporary opportunities would substantially interfere with return to the individual’s regular employment; and
  - (b) Capable of accepting and reporting for any suitable work opportunities within the labor market in which work is being sought, including temporary and part time opportunities; and
  - (c) Not imposing conditions which substantially reduce the individual’s opportunities to return to work at the earliest possible time; \* \* \*.
- \* \* \*

OAR 471-030-0036(3) (April 1, 2018). Where, as here, the Department has not paid benefits to a claimant, the claimant has the burden to show that they are eligible to receive those benefits. *See, Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

Order No. 19-UI-129816 concluded that claimant was ineligible for benefits during all of the weeks at issue. The order reasoned that claimant’s initial responses to the Department representative on April 4, 2019 that he would not be willing to accept accounting work that required he remain available for work until 5:00 p.m., and that he would need a few days to arrange for his coaching replacement, were more persuasive than his later statements, made after he was read the advisory regarding the availability requirement. After he was read the advisory, claimant stated that he would be willing and able to quit his coaching job, immediately if necessary. However, the record as a whole shows that claimant initially became aware of those requirements on April 4, and that his prior responses to the representative’s questions, which were against his own interest, demonstrated his honesty. Viewed objectively, the record is sufficient to establish that although claimant was not willing to accept accounting work opportunities “during all of the usual hours and days of the week customary” for that work prior to April 4, 2019, he was willing to do so during the weeks after April 4, 2019.

Accordingly, claimant was not available for work during the weeks including February 24 to April 6, 2019 (weeks 09-19 through 14-19), and is ineligible for benefits for those weeks. However, claimant was available for work during the weeks including April 7 through May 11, 2019 (weeks 15-19 through 19-19), and is eligible for benefits for those weeks, if he is otherwise qualified.

**DECISION:** Order No. 19-UI-129816 is modified, as outlined above.

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

**DATE of Service: June 18, 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**  
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