

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0635**

*Modified*  
*Ineligible Weeks 10-19 through 12-19, and Week 22-19*  
*Eligible Weeks 13-19 through 21-10, and Week 23-19*

**PROCEDURAL HISTORY:** On May 22, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from March 3, 2019 through March 23, 2019, and therefore was denied benefits for that period and until the reason for the denial ended (decision # 81502). Claimant filed a timely request for hearing. On June 20, 2019, ALJ S. Lee conducted a hearing, and on June 27, 2019, issued Order No. 19-UI-132394, modifying decision # 81502 and concluding claimant did not actively seek work from March 3, 2019 through March 30, 2019, and from May 26, 2019 through June 8, 2019. The order further concluded that claimant actively sought work from March 31, 2019 through May 25, 2019, and from June 9, 2019 through June 15, 2019. On July 10, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) On February 26, 2019, claimant filed an initial claim for unemployment insurance benefits. Claimant claimed benefits for the period from March 3, 2019 through June 8, 2019 (weeks 10-19 through 23-19), the weeks at issue.<sup>1</sup> The Department paid claimant benefits for the period from March 3, 2019 through May 18, 2019 (weeks 10-19 through 20-19), and denied benefits for the period from May 19, 2019 through June 8, 2019 (weeks 21-19 through 23-19).

(2) Claimant did not apply for acceptance to the Department's self-employment assistance (SEA) program, participate in the SEA program, or engage in self-employment during the weeks at issue.

(3) For the week of March 3, 2019 through March 9, 2019 (week 10-19), claimant had one direct contact with an employer, Labor Ready. Claimant's other work search activities that week were research on the SEA program.

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<sup>1</sup> The order under review found as fact that claimant claimed the period of June 9, 2019 through June 15, 2019. However, the Department witness testified that claimant claimed weeks 10-19 through 23-19, and did not testify that claimant claimed week 24-19 or give information regarding claimant's work search activities for week 24-19. Audio Record at 8:46 to 11:02; 15:25 to 15:32; 17:11 to 17:50 (referring to week 23-19 as "the final week claimed").

(4) For the week of March 10, 2019 through March 16, 2019 (week 11-19), claimant had direct contact with the two employers, Labor Ready and Roseburg Forest Products. Claimant's other work search activities were regarding the SEA program.

(5) For the week of March 17, 2019 through March 23, 2019 (week 12-19), claimant engaged only in work seeking activities related to the SEA program.

(6) For the weeks from March 24, 2019 through May 18, 2019 (weeks 13-19 through 20-19), claimant conducted at least five work seeking activities per week, including two direct contacts with employers each week.

(7) For the week of May 19, 2019 through May 25, 2019 (week 21-19), claimant had direct contact with the employers, Boise Cascade and Timber Products, and engaged in three other work seeking activities, including seeking work online, "follow-up" regarding an employment application, and working on a resume. Audio Record at 15:41 to 16:17.

(8) For the week of May 26, 2019 through June 1, 2019 (week 22-19), claimant had direct contact with the two employers, A&R Solar and White City Millwork. Claimant engaged in two other work seeking activities, and did not engage in a third work seeking activity due to the Memorial Day holiday.

(9) For the week of June 2, 2019 through June 8, 2019 (week 23-19), claimant had direct contact with three employers: Centuric Construction Group, Harry & David, and NPL Construction. Claimant engaged in three other work seeking activities, including looking for work in a newspaper, on Craigslist, and through Confident Staffing. Audio Record at 17:11 to 17:50.

**CONCLUSION AND REASONS:** Claimant did not actively seek work from March 3, 2019 through March 23, 2019 (weeks 10-19 through 12-19), and from May 26, 2019 through June 1, 2019 (week 22-19), and is ineligible for benefits for those weeks. Claimant did actively seek work from March 24, 2019 through May 25, 2019 (weeks 13-19 through 21-19), and from June 2, 2019 through June 8, 2019 (23-19).

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 few exceptions, none of which apply here, 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.* "Direct contact" means "making contact with an employer . . . to inquire about a job opening or applying for job openings in the manner required by the hiring employer." OAR 471-030-0036(5)(a)(B).

The Department paid claimant benefits for the period from March 3, 2019 through May 18, 2019 (weeks 10-19 through 20-19), and denied benefits for the period from May 19, 2019 through June 8, 2019 (weeks 21-19 through 23-19). Thus, the Department has the burden to show that claimant did not actively seek work during weeks 10-19 through 20-19, and claimant has the burden to prove that the Department should have paid him benefits for weeks 21-19 through 23-19. *Nichols v. Employment*

*Division*, 24 Or App 195, 544 P2d 1068 (1976) (where the Department has paid benefits it has the burden to prove benefits should not have been paid; by logical extension of that principal, where benefits have not been paid claimant has the burden to prove that the Department should have paid benefits).

The order under review concluded that claimant did not complete five work seeking activities during week 13-19 and 23-19, among other weeks. The order under review also mistakenly referred to week 24-19, although week 24-19 was not a week at issue in this case. The record shows claimant actively sought work during weeks 13-19 and 23-19, in addition to weeks 14-19 through 21-19. Claimant is therefore eligible for benefits for these weeks.

Much of claimant's work search activity involved research into the SEA program. The Department waives the actively seeking work requirement for SEA program participants. However, claimant did not apply for acceptance to the Department's SEA program during the weeks at issue, and was not engaged in self-employment. Because the record does not show that claimant qualified for any exception to the actively seeking work requirement, claimant was required to perform five work seeking activities each week as a condition of being eligible to receive unemployment insurance benefits. During the period of March 3, 2019 through March 23, 2019, claimant engaged in research regarding the SEA program instead of completing five work seeking activities per week. For the week of May 26, 2019 through June 1, 2019, claimant had only four work seeking activities because he mistakenly believed the Memorial Day holiday reduced the number of work seeking activities required for that week. Because claimant did not perform five activities per week for these weeks, he did not "actively seek work," and he is ineligible for either waiting week credit or benefits for weeks 10-19 through 12-19, and week 22-19.

**DECISION:** Order No. 19-UI-132394 is modified, as outlined above.

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

**DATE of Service:** August 14, 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 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 Empleo. Si no está de acuerdo con esta decisión, puede presentar una Aplicación 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**

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فوراً، و إذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للمراجعة القانونية بمحكمة الاستئناف بأوريغون و ذلك بإتباع الإرشادات المدرجة أسفل القرار.

**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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