

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0762**

*Affirmed*  
*Ineligible Weeks 23-19 to 25-19*  
*Eligible Weeks 26-19 to 29-19*

**PROCEDURAL HISTORY:** On July 1, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from June 2, 2019 to June 22, 2019 (decision # 80359). Claimant filed a timely request for hearing. On July 24, 2019, ALJ Seideman conducted a hearing, and on July 30, 2019 issued Order No. 19-UI-134170, modifying decision # 80359 and concluding that claimant was not available for work from June 2, 2019 to June 22, 2019 but was available for work from June 23, 2019 to July 20, 2019. On August 8, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's argument to the extent it was based upon the hearing record.

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the portion of the order under review concluding that claimant was available for work from June 23, 2019 to July 20, 2019 is **adopted**.

**FINDINGS OF FACT:** (1) On December 31, 2018, claimant filed an initial claim for unemployment insurance benefits. Claimant filed weekly claims for benefits for weeks including June 2, 2019 to June 22, 2019 (weeks 23-19 to 25-19), the weeks at issue.

(2) Claimant sought work as a caregiver. Her labor market included Eugene and Springfield, Oregon. The customary days and hours caregivers work in that labor market include all days and hours.

(3) Claimant's living situation was such that she could not sleep during the day, and therefore could not work the overnight shift. She asked a prior employer not to schedule her for overnight shifts.

(4) Prior to June 2019, claimant's employment with the prior employer ended because claimant notified the employer that she could not work overnight shifts. The prior employer did not have other work available for claimant, and her employment ended.

(5) On June 10, 2019, a Department employee interviewed claimant. Claimant told the employee she could not work the overnight shift.

(6) On June 25, 2019, a Department employee spoke with claimant about her scheduling limitation and explained that claimant was required to be available for all shifts as a condition of receiving benefits. After that conversation, claimant stopped restricting her availability.

**CONCLUSIONS AND REASONS:** Claimant was not available for work from June 2, 2019 to June 22, 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; and

\* \* \*

OAR 471-030-0036(3) (April 1, 2018). As a condition of receiving benefits, claimant was required to be available to work all days and shifts, including the overnight shift. During the weeks at issue, claimant was not willing or capable of working overnight shifts. Claimant's previous employment ended because of claimant's preference not to work the overnight shift, and that condition did not change until June 25, 2019 when claimant learned that she had to be willing to work overnight shifts as a condition of being eligible for benefits. The record establishes that it is more likely than not that claimant's unwillingness to work overnight shifts persisted during all the weeks at issue, from June 2, 2019 through June 22, 2019. She therefore was not available for work during those weeks, and she is not eligible to receive benefits during those weeks. As previously noted, claimant was available for work and eligible for benefits from June 23, 2019 through July 20, 2019.

**DECISION:** Order No. 19-UI-134170 is affirmed.

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

**DATE of Service:** September 13, 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 ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄໍາຕັດສິນນີ້.

**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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