

**EMPLOYMENT APPEALS BOARD DECISION**  
**2020-EAB-0282**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On February 26, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from February 9, 2020 through February 22, 2020 and until the reason for the denial ended (decision # 142649). Claimant filed a timely request for hearing. On March 25, 2020, ALJ Frank conducted a hearing at which the employer failed to appear, and on March 27, 2020 issued Order No. 20-UI-147013, modifying the Department's decision by concluding claimant was not available for from February 9, 2020 through March 21, 2020. On April 1, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

On April 8 and April 14, 2020, claimant submitted written arguments to EAB in support of her application for review. Claimant's arguments contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented claimant from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), EAB considered only information received into evidence at the hearing when reaching this decision. However, because this case is being remanded to the Office of Administrative Hearings (OAH) for further development of the record, claimant may offer the new information contained in her written arguments at the hearing on remand. Claimant must comply with the procedures set forth by OAH in the notice of hearing if she wishes to have any new documentary evidence included in the record at the remand hearing, and should contact OAH directly if she needs help understanding those procedures. During the remand hearing, the ALJ will decide if claimant's additional information is relevant to the issues on remand and should be admitted into evidence, and if so, the Department will have the opportunity to respond to the information.

**EVIDENTIARY MATTER:** EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of Department records noting telephone conversations between claimant and a Department representative on February 24, 2020, February 27, 2020, and March 5, 2020. The records have been marked as EAB Exhibits 1 and 2, and copies provided to the parties with this decision. Any party that objects to our admitting EAB Exhibits 1 and/or 2 must submit such objection to this office in writing, setting forth the basis of the

objection, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the exhibit(s) will remain in the record.

**FINDINGS OF FACT:** (1) In 2019, Village Childcare Enterprises LLC employed claimant as a childcare provider. In late 2019, claimant went on a maternity leave with the employer. In early 2020, claimant gave birth to her third child. Claimant also had a 5-year old child and a 2-year old child.

(2) On February 11, 2020, claimant spoke with the employer about returning to work from her maternity leave. The employer informed claimant that to provide childcare for her children while she worked, claimant would have to pay the employer approximately \$1,800 per month, which claimant could not afford after paying for the costs of her commute and other basic expenses. Claimant notified the employer that she would not be returning to work.

(3) On February 11, 2020, claimant filed an initial claim for unemployment insurance benefits. Claimant claimed benefits for the weeks from February 9 through March 21, 2020 (weeks 07-20 through 12-20), the weeks at issue. During the weeks at issue, claimant sought work as a childcare provider, prekindergarten caregiver, nanny and housekeeper. Work in those occupations was performed all days, day and swing shifts. The Department did not pay claimant benefits for the weeks at issue.

(4) On February 24, 2020, claimant spoke to a Department representative by telephone and stated, in relevant part, "SHE CANT AFFORD THE CHILDCARE WHERE SHE WORKED. HER MOM CAN WATCH HER CHILDREN AT ANY TIME." EAB Exhibit 1.

(5) On February 27, 2020, claimant spoke to a Department representative by telephone and the representative noted, in relevant part, "PTC CLMT STATES HAS RESOLVED CHILDCARE ISSUE." EAB Exhibit 1.

(6) On March 5, 2020, claimant spoke to a Department representative by telephone and the representative noted, in relevant part, "PTC CLMT INDICATED THAT SHE HAS HAD CHILDCARE SINCE ADJUDICATOR AND CLAIMANT TALKED ON 02-26-20. BACK THEN, CLAIMANT DID NOT HAVE CHILDCARE FACTFINDING AND RECORDING CONVERSATION SHOW. CLAIMANT WAS ASKED A SIMPLE QUESTION. SINCE WHEN SHE HAD CHILDCARE. SHE SAID SINCE TWO WEEKS AGO WHICH WOULD HAVE BEEN APPROX 02-11-20." EAB Exhibit 2.

(7) On March 12, 2020, claimant's aunt wrote a letter to the Department in which she reported, "As of February 10, 2020 and prior I have been helping watch [claimant's children] Monday through Friday from 9:00 to 6:00. Being a family member, I do not charge [claimant] any amount to watch them[.]" Audio Record at 13:50 to 14:55.

**CONCLUSIONS AND REASONS:** Order No. 20-UI-147013 is set aside and this matter remanded for further development of the record.

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 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

(d) Physically present in the normal labor market area as defined by section (6) of this rule, every day of the week \* \* \*.

\* \* \*

OAR 471-030-0036(3) (December 8, 2019).

Order No. 20-UI-147013 concluded that claimant was not available for work during each of the weeks at issue, reasoning as follows:

Claimant's argument in this matter is contingent upon a letter furnished by her aunt [.] This individual purports to have agreed with claimant to provide any required childcare as of February 10, 2020. Claimant could not persuasively explain at hearing, however, why, if this agreement was struck, she had separated from her employer's employ the very next day due to a lack of affordable childcare. Likewise, if this arrangement truly existed, claimant would have likely mentioned it to Employment Department representative with whom she spoke on February 26, 2020. Instead, claimant alternatively stated during this exchange that she still lacked childcare and that her mother was available to watch her children in certain circumstances. . . In any event, if family members were available to care for claimant's children, she would have, more likely than not, remained employed. . . . Claimant was not available for work.

Order No. 20-UI-147013 at 3. However, the record was not sufficiently developed to support a conclusion that claimant was not available for work during the weeks at issue due to a lack of child care.

The order reasons, in part, that "if family members were available to care for claimant's children, she would have, more likely than not, remained employed," and because she did not remain employed, claimant was not available for work during all of the weeks at issue. However, the record fails to show where claimant lived or what claimant's labor market was during those weeks, or even on February 11, 2020. If she lived in the McMinnville, Oregon area, as the record seems to suggest, employment with the employer in Portland may not have been within her labor market and not having sufficient childcare or finances for childcare and transportation costs to return to it would not have made her unavailable for work under OAR 471-030-0036 (3). Audio Record at 17:00 to 19:00. At the remand hearing, the record

needs to be developed with regard to claimant's residence and actual labor market area during each of the weeks at issue, and whether claimant had sufficient childcare with her family members or otherwise and affordable transportation to be considered available for work within her actual labor market.

The record also fails to show the entire content of claimant's conversation with a Department representative on February 26, 2020. At hearing, the Department's witness essentially paraphrased that conversation, but EAB Exhibit 2 indicates that a fact-finding document was prepared from a recording of that conversation. Audio Record at 12:50 to 14:00. On remand, the Department should provide an accurate and complete record of the February 26, 2020 conversation between the Department representative and claimant, whether it be the fact-finding document, the recording, or both.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary for a determination of whether claimant was capable of accepting and reporting for any suitable work opportunities within the labor market in which work was being sought during each of the weeks at issue, Order No. 20-UI-147013 is reversed, and this matter is remanded.

**DECISION:** Order No. 20-UI-147013 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service:** May 7, 2020

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 20-UI-147013 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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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 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.

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