

**EMPLOYMENT APPEALS BOARD DECISION**  
**2020-EAB-0426**

*Affirmed*  
*Ineligible Weeks 13-20 through 17-20*

**PROCEDURAL HISTORY:** On April 10, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from March 22, 2020 through April 4, 2020 and until the reason for the denial had ended (decision # 115034). Claimant filed a timely request for hearing. On May 7, 2020, ALJ Schmidt conducted a hearing, and on May 8, 2020 issued Order No. 20-UI-149459, modifying<sup>1</sup> the Department's decision by concluding that claimant was not available for work from March 22, 2020 through April 25, 2020 (weeks 13-20 through 17-20). On May 27, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument to the extent it was based on the hearing record. In that argument, claimant asserted that OAR 471-0030-0070(5) (effective March 8, 2020 through September 12, 2020), a provision of the Oregon administrative rule recently passed to address the unique situations arising due to COVID-19 and the actions to slow its spread, applied to this case and, in accordance with its provisions, he was not unavailable for work during the weeks at issue. Written Argument at 1.

OAR 4710030-0070(5) provides, in relevant part:

Available for work – ORS 657.155(1)(c) and federal law require a person to be available for work in order to receive unemployment insurance benefits. A person will not be deemed unavailable for work because:

- (a) They are staying in their home, or are quarantined, due to risk of exposure to, or spread of, the novel coronavirus at the advice of a health care provider or by advice issued by public health officials or by directive of a government official, even if their employer had work for them they could otherwise have performed[.]

<sup>1</sup> Although Order No. 20-UI-149459 stated that the order affirmed decision # 115034, the order modified that decision by adding the additional weeks claimed and denied by the Department after the date decision # 115034 was issued. Order No. 20-UI-149459 at 1, 5.

\* \* \*

Claimant argued that he was available for work during the weeks at issue because, during those weeks, he self-quarantined in his temporary home in Costa Rica rather than return to his permanent residence in his Oregon labor market to minimize his exposure to, or the spread of, COVID-19 at the advice of public health officials. Written Argument at 1. However, both the Department and Order No. 20-UI-149459 concluded that claimant was not available for work under ORS 657.155(2) and OAR 471-030-0036(3)(d) and (i) (December 8, 2019), which together provide that an individual who leaves the individual's normal labor market for the major portion of any week is presumed to be unavailable for work unless certain conditions are met, which claimant failed to show. The temporary rule, by its language, applied only to ORS 657.155(1)(c) and not ORS 657.155(2). The Department's witness asserted at hearing that although the temporary rule generally was intended to expand coverage for claimants during the pandemic, the rule did not apply to claimant's claims for benefits because he was outside his labor market during those weeks. Audio Record at 12:15 to 14:10. Accordingly, it is reasonable that EAB defer to the Department's reasonable interpretation of its own rule and similarly conclude that OAR 471-030-0070(5) does not exempt individuals in claimant's circumstances from the requirements of ORS 657.155(2) and OAR 471-030-0036(3)(d) and (i). *See Isayeva v. Employment Department*, 266 Or App 806, 312 (2014), citing *Callaway v. Employment Department*, 225 Or App 650, 654-655 (2009) (The Oregon Court of Appeals will "defer to an agency's interpretation of its own rule unless it is inconsistent with the rule's text, context or other source of law.")

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the order under review is **adopted**.

**DECISION:** Order No. 20-UI-149459 is affirmed.

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

**DATE of Service:** June 30, 2020

**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 الإستئناف 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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