

**EMPLOYMENT APPEALS BOARD DECISION**  
**2020-EAB-0445**

*Modified*  
*Eligible Weeks 14-20 and 17-20*  
*Ineligible Weeks 15-20 and 16-20*

*Modificada*  
*Elegible Semanas 14-20 y 17-20*  
*No Elegible Semanas 15-20 y 16-20*

**PROCEDURAL HISTORY:** On April 29, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work or eligible to receive unemployment insurance benefits from March 29, 2020 through April 25, 2020 (decision # 83812). Claimant filed a timely request for hearing. On June 1, 2020, ALJ Snyder conducted a hearing interpreted in Spanish, and on June 2, 2020, issued Order No. 20-UI-150536, affirming the Department's decision. On June 5, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

**HISTORIA PROCESAL:** *El 29 de abril de 2020, el Departamento de Empleo de Oregón (el Departamento) envió notificación de una decisión administrativa concluyendo que el reclamante no estaba disponible para trabajar o elegible para recibir beneficios de desempleo desde el 29 de marzo de 2020 hasta el 25 de abril de 2020 (decisión # 83812). El reclamante sometió una aplicación oportuna para una audiencia. El primer de junio de 2020, la jueza administrativa Snyder llevó a cabo una audiencia que fue interpretada al español, y el 2 de junio de 2020, emitió la Orden No. 20-UI-150536, confirmando la decisión del Departamento. El 5 de junio de 2020, el reclamante presentó una aplicación para revisión de la orden judicial a La Junta de Apelaciones de Empleo (EAB).*

EAB considered claimant's written argument in reaching this decision. *EAB tomó en cuenta el argumento por escrito del reclamante para llegar a esta decisión.*

**FINDINGS OF FACT:** (1) On March 26, 2020, claimant filed an initial claim for unemployment insurance benefits.

(2) Claimant claimed benefits for the weeks from March 29, 2020 through April 25, 2020 (weeks 14-20 through 17-20). The Department denied benefits for these weeks. These are the weeks at issue.

(3) The Department determined claimant's labor market area to be Beaverton, Oregon and the surrounding area.

(4) Claimant was in his labor market area for the major part of the week from March 29 through April 4, 2020.

(5) Claimant was in Mexico and not in his labor market area from April 5, 2020 through April 19, 2020.

(6) Claimant was in his labor market area on April 25, 2020.

**CONCLUSIONS AND REASONS:** Claimant was available for work during weeks 14-20 and 17-20. Claimant was not available for work or eligible for unemployment benefits during weeks 15-20 and 16-20.

**CONCLUSIONES Y RAZONES:** *El reclamante estaba disponible para trabajar durante las semanas 14-20 y 17-20. El reclamante no estaba disponible para trabajar y no era elegible para beneficios de desempleo durante las semanas 15-20 y 16-20.*

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 "[p]hysically 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)(d) (December 8, 2019). OAR 471-030-0036(6)(a) states, in relevant part, that "[a]n individual's normal labor market shall be that geographic area surrounding the individual's permanent residence within which employees in similar circumstances are generally willing to commute to seek and accept the same type of work at a comparable wage. The geographic area shall be defined by [the Department]." OAR 471-030-0036(3)(i) states, in relevant part, that an individual is not available for work in any week claimed if the individual resides or spends the major portion of the week in a country not included in the Compact of Free Association with the United States of America. OAR 471-030-0036(3)(i)(B).

Claimant has the burden of proof to show that for weeks 14-20 through 17-20, he was available for work. *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).

Order No. 20-UI-150536 found as fact that claimant travelled to Mexico "at the beginning of April [2020]," and concluded that claimant was not available for work from March 29, 2020 through April 25,

2020 (weeks 14-20 through 17-20) because he was in Mexico, and not in his labor market.<sup>1</sup> The record does not support the order's finding of fact or conclusion regarding weeks 14-20 and 17-20.

Claimant testified that he flew to Mexico on April 9 or 16, 2020, and that he went to Mexico in "early April." Transcript at 9, Audio Record at 31:21 to 34:08. The Department's information showed that claimant claimed benefits from Mexico on April 5, 2020, showing that more likely than not, claimant was in Mexico on April 5. Transcript at 6-7. The record does not show that claimant was in Mexico or otherwise outside of his labor market for the major portion of the week from March 29, 2020 through April 4, 2020. *See* OAR 471-030-0036(3)(i)(B). Claimant was therefore available for work during week 14-20.

The record shows that claimant was in Mexico from April 5, 2020 through April 19, 2020, which included all of weeks 15-20 and 16-20. Mexico is not included in the Compact of Free Association with the United States of America. Because claimant spent the major portion of weeks 15-20 and 16-20 in a country that is not included in the Compact of Free Association with the United States of America, claimant was not available for work during those weeks. *See* OAR 471-030-0036(3)(i)(B).

The record shows that claimant was in Mexico on Sunday, April 19, 2020, but also shows that he had returned to the United States by Saturday, April 25, 2020. Thus, although the record shows claimant was in Mexico on the first day of week 17-20, it does not show that claimant resided in Mexico that week, or that he spent the major portion of that week in Mexico. Claimant was therefore available for work during week 17-20.

In sum, claimant was not available for work during weeks 15-20 and 16-20. Claimant was available for work during weeks 14-20 and 17-20. He is eligible for benefits during weeks 14-20 and 17-20.

**DECISION:** Order No. 20-UI-150536 is modified. *La Orden de la Audiencia 20-UI-150536 es modificada.*

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

**DATE of Service:** July 13, 2020

**NOTE:** This decision modifies an order that denied benefits. Please note that payment of benefits, if any are owed, may take approximately a week for the Department to complete.

**NOTA:** *Esta decisión modifica una orden judicial que negó beneficios. Por favor tenga en cuenta que, si le deben beneficios, el Departamento puede tomar aproximadamente una semana para pagar esos beneficios.*

**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,

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<sup>1</sup> Order No. 20-UI-150536 at 2, 3.

Oregon 97310 or visit the Court of Appeals website at [courts.oregon.gov](https://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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*NOTA: Usted puede apelar esta decisión presentando una solicitud de revisión judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) dentro de los 30 días siguientes a la fecha de notificación indicada arriba. Vea ORS 657.282. Para obtener formularios e información, puede escribir a la Corte de Apelaciones de Oregon, Sección de Registros (Oregon Court of Appeals/Records Section), 1163 State Street, Salem, Oregon 97310 o visite el sitio web en [courts.oregon.gov](https://courts.oregon.gov). En este sitio web, hay información disponible en español.*

**Por favor, ayúdenos mejorar nuestros servicios completando un formulario de encuesta sobre nuestro servicio de atención al cliente.** Para llenar este formulario, puede visitar <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. Puede acceder a la encuesta usando una computadora, tableta, o teléfono inteligente. Si no puede llenar el formulario sobre el internet, puede comunicarse con nuestra oficina para una copia impresa de la encuesta.



# 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.

**Employment Appeals Board - 875 Union Street NE | Salem, OR 97311**  
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