

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0088**

*Affirmed*  
*Ineligible ~ Weeks 23-20 through 31-20*

**PROCEDURAL HISTORY:** On December 4, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work from May 31, 2020 through August 1, 2020 and was therefore not eligible to receive unemployment insurance benefits for that period (decision # 95820). Claimant filed a timely request for hearing. On January 20, 2021, ALJ S. Lee conducted a hearing at which the employer failed to appear, and on January 22, 2021 issued Order No. 21-UI-159598, affirming decision # 95820. On February 6, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant did not declare that they provided a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented them from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

**FINDINGS OF FACT:** (1) Beginning in late 2018 and continuing throughout the time period relevant to this decision, the employer, Alaska Airlines Inc., employed claimant as a flight attendant.

(2) Following the onset of the COVID-19 pandemic, demand for air travel fell sharply and the employer began to experience financial difficulty. In late spring 2020, the employer began offering periods of voluntary unpaid leave to their flight attendants as a way to save labor costs.

(3) In May 2020, the employer offered claimant an eight-week period of unpaid voluntary leave from May 31, 2020 to August 1, 2020. Claimant was free to decline the voluntary leave and continue working if she wished. Claimant decided to accept the offer of leave. Claimant believed that doing so would help improve the employer's financial condition and might result in the employer not furloughing her in the future.

(4) From May 31, 2020 until August 1, 2020, claimant took the voluntary leave of absence. On May 31, 2020, claimant filed an initial claim for unemployment insurance benefits. Claimant claimed benefits for each of the weeks including May 31, 2020 through August 1, 2020 (weeks 23-20 through 31-20), the weeks at issue. The Department did not pay claimant benefits for the week of May 31, 2020 through June 6, 2020 (week 23-20). The Department paid claimant for the remaining weeks (weeks 24-20 through 31-20).

(5) During the weeks at issue, continuing work as a flight attendant was available to claimant. Claimant would have continued to work had she not taken the leave of absence, although she likely would have worked fewer hours due to the employer's financial condition.

(6) On August 2, 2020, claimant returned to work for the employer.

**CONCLUSIONS AND REASONS:** Claimant was not available for work during the weeks of May 31, 2020 through August 1, 2020 (weeks 23-20 through 31-20), and is not eligible to receive benefits for those weeks.

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[.]

\* \* \*

(c) Not imposing conditions which substantially reduce the individual's opportunities to return to work at the earliest possible time[.]

\* \* \*

OAR 471-030-0036(3) (August 8, 2019). Claimant did not receive benefits for week 23-20; therefore, claimant had the burden to prove that the Department should have paid her benefits for that week. *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 principle, where benefits have not been paid claimant has the burden to prove that the Department should have paid benefits). The Department paid claimant benefits for weeks 24-20 through 31-20, and so had the burden to show that claimant was not available for work and therefore ineligible for benefits during those weeks.

The record shows that during the weeks at issue, claimant was on a voluntary leave of absence. Work for the employer was available during claimant's voluntary leave period. Although she likely would have worked fewer hours due to the employer's financial condition, claimant could have declined the employer's offer of leave and continued working for the employer during the weeks at issue. Therefore,

the record indicates that during the weeks at issue, a work opportunity in the form of claimant's flight attendant work for the employer was available, but claimant was not willing to work that work opportunity. Thus, applying OAR 471-030-0036(3)(a) and (c), claimant was not available for work during the weeks at issue and, as a consequence, is ineligible to receive benefits for those weeks.

Due to unique situations arising under COVID-19 and the actions to slow its spread, there are temporary unemployment insurance provisions that, if applicable, can modify the above available for work analysis. OAR 471-030-0070(5) (effective March 8, 2020 through September 12, 2020) provides that 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; [or because]

\* \* \*

(c) They are home to care for a family member due to the effects of novel coronavirus[.]

\* \* \*

These temporary provisions do not apply in claimant's case. The record shows that claimant took the voluntary leave of absence during the weeks at issue to help improve the employer's financial condition and thereby avoid being furloughed in the future, not because she was staying at home or quarantined due to risk of exposure to, or spread of, the novel coronavirus. Similarly, although claimant testified at hearing that she tended to her elderly father-in-law while on leave during the weeks at issue, claimant did not take the leave of absence for the purpose of providing care for her father-in-law. Rather, her decision to stay home during the weeks at issue "[was] mostly just about the staffing adjustment leave and [claimant] needing to protect [her] job for the future." Audio Record at 16:16; 18:03. Further, there is no indication from the record that claimant's father-in-law was ever exposed to or otherwise affected by COVID-19, or that claimant's care for him had anything to do with the effects of the novel coronavirus. The preponderance of evidence therefore fails to show that, during the weeks at issue, claimant was home to care for her father-in-law or any other family member due to the effects of the novel coronavirus.

Accordingly, although claimant's decision to accept her employer's offer of voluntary leave may have been a sensible choice given the circumstances, no temporary unemployment insurance provision operates to relieve her of the requirement that she be available for work during the weeks at issue. Claimant was not available for work during each of the weeks 23-20 through 31-20, and therefore was not eligible for benefits during those weeks.

**DECISION:** Order No. 21-UI-159598 is affirmed.

S. Alba and D. P. Hettle.

**DATE of Service:** March 12, 2021

**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](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.

**NOTE:** This decision denies payment of your Unemployment Insurance (UI) benefits. However, you may be eligible for Pandemic Unemployment Assistance (PUA) benefits for the period you are not eligible for other benefits as long as you are unable to work, unavailable for work, or unemployed due to the COVID-19 public health emergency. PUA is a new unemployment benefits program available through the Oregon Employment Department in response to the COVID-19 pandemic.

Visit <https://unemployment.oregon.gov> for more information, to apply for PUA, or to contact the Oregon Employment Department using the “Contact Us” form. You can also apply for PUA by calling 1-833-410-1004, but please be aware that the PUA staff cannot answer questions about this decision that denies payment of regular Unemployment Insurance (UI) benefits.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



# 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**

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**  
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711  
[www.Oregon.gov/Employ/eab](http://www.Oregon.gov/Employ/eab)

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.