

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0644**

*Reversed*

*Eligible Weeks 46-20 through 10-21 and Weeks 13-21 through 15-21*

*Reversada*

*Elegible Desde la Semana 46-20 Hasta la Semana 10-21 y la Semana 13-21 Hasta la Semana 15-21*

**PROCEDURAL HISTORY:** On March 16, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work and therefore ineligible to receive unemployment insurance benefits for the weeks including November 8, 2020 through March 6, 2021 (weeks 46-20 through 09-21) and until the reason for the denial had ended (decision # 101520). Claimant filed a timely request for hearing. On June 7, 2021 and July 14, 2021, ALJ Amesbury conducted a hearing that was interpreted in Spanish, and on July 20, 2021 issued Order No. 21-UI-170659, modifying decision # 101520 by concluding that claimant was not available for work and therefore ineligible to receive unemployment insurance benefits for the weeks including November 8, 2020 through March 13, 2021 and March 28, 2021 through April 17, 2021 (weeks 46-20 through 10-21 and weeks 13-21 through 15-21).<sup>1</sup> On August 6, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090

<sup>1</sup> The order under review concluded that it affirmed decision # 101520. Order No. 21-UI-170659 at 5. However, because the order under review concluded that claimant was ineligible for benefits for additional weeks not included in decision # 101520, the order modified, rather than affirmed, decision # 101520.

(May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered the written argument to the extent it was based on the record.

**ARGUMENTO POR ESCRITO:** *El argumento por escrito de la reclamante contiene información que no es parte del expediente de la audiencia en este caso, y la reclamante no demostró que razones o circunstancias afuera de su control le impidieron ofrecer esa información durante la audiencia. De acuerdo con ORS 657.275(2) y OAR 471-041-0090 (13 de mayo de 2019), EAB solamente puede considerar información que haya sido recibida como evidencia en la audiencia judicial. Sin embargo, EAB consideró las partes del argumento por escrito que se basaban en evidencia en la audiencia judicial. EAB consideró las partes del argumento escrito que se basaban en el expediente de la audiencia.*

**FINDINGS OF FACT:** (1) From September 2020 until October 6, 2020, claimant lived in Irrigon, Oregon and worked for Independent Transport, LLC, cleaning and sorting onions. The work for Independent Transport, LLC ended on October 6, 2020. In November 2020, claimant moved to Stanfield, Oregon.

(2) Claimant claimed benefits for the weeks including November 8, 2020 through March 13, 2021 (weeks 46-20 through 10-21), and for the weeks from March 28, 2021 through April 7, 2021 (weeks 13-21 through 15-21). These are the weeks at issue. The Department paid claimant benefits for weeks 46-20 through 52-20, and did not pay benefits for weeks 53-20 through 10-21 and 13-21 through 15-21.

(3) During the weeks at issue, claimant sought work as a farmworker. Claimant's labor market area during the weeks at issue was Stanfield, Hermiston, Echo, Boardman, Irrigon, and Umatilla, Oregon. Claimant lived in Stanfield and, later, in Hermiston during the weeks at issue. Farm work was customarily performed during all days, from 5:00 a.m. to 6:00 p.m., in claimant's labor market.

(4) During all of the weeks at issue, claimant did not own or know how to drive a vehicle. Claimant primarily rode employer-provided transportation to perform farm work in her labor market area. It was common for agricultural employers in her labor market area to provide transportation to the work sites; often the employers preferred or even required that employees not use their own transportation to the work sites. If the employers did not provide transportation, claimant found transportation to work from coworkers, extended family members, or her children.

(5) On one occasion during the weeks at issue when claimant called Independent Transport, LLC to ask for work, the secretary at Independent Transport, LLC told claimant that the employer had work for claimant that day and that within two hours she would find claimant a ride from Hermiston to a work site. The secretary did not tell claimant the location of the work site or call claimant back regarding transportation to work, and claimant did not work that day. The next day, claimant prepared for work expecting Independent Transport, LLC to provide her transportation to a work site. No transportation arrived for claimant to take her to work that day and claimant learned that the position was no longer open.

**CONCLUSIONS AND REASONS:** Claimant was available for work and eligible to receive benefits during the weeks including November 8, 2020 through March 13, 2021 (weeks 46-20 through 10-21) and March 28, 2021 through April 7, 2021 (weeks 13-21 through 15-21).

**CONCLUSIONES Y RAZONES:** *La reclamante estaba disponible para trabajar y elegible para recibir beneficios durante las semanas desde el 8 de noviembre de 2020 hasta el 13 de marzo de 2021 (semanas 46-20 hasta 10-21) y desde el 28 de marzo de 2021 hasta el 7 de abril de 2021 (semanas 13-21 hasta 15-21).*

The Department paid claimant benefits, and therefore has the burden to show that claimant was not available for work, for weeks 46-20 through 52-20. Because the Department denied benefits for weeks 53-20 through 10-21 and 13-21 through 15-21, claimant has the burden to show that she was available for work during those weeks. *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).

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) (August 2, 2020 through December 26, 2020).

The order under review concluded that claimant was not available for work during the weeks at issue, reasoning that claimant did not have a reliable method of getting to work during the weeks at issue and was therefore not capable of reporting for all suitable work opportunities within the labor market where claimant sought work. Order No. 21-UI-170659 at 5. The record does not support this conclusion.

The preponderance of the evidence in the record shows that claimant was capable of reporting for work within her labor market, therefore available for work, during all of the weeks at issue. Claimant often rode employer-provided transportation to work. If the employer did not provide transportation from claimant’s location to the work site, claimant obtained a ride from coworkers or family members. The record shows that on one occasion, claimant missed a work opportunity with Independent Transport,

LLC due to a lack of transportation. However, on that occasion, the secretary told claimant that she would contact claimant regarding a ride to work, and never contacted claimant about a ride or provided a ride for claimant for that work opportunity. Claimant was not told and did not otherwise know the work site location, so she could not have been reasonably expected to report to work via her own transportation on that occasion. The fact that Independent Transport, LLC failed to provide the transportation it promised on that occasion does not show that claimant was incapable of finding her own transportation to that work site or any other work site in her labor market during the weeks at issue. Claimant's testimony at hearing was based on her own firsthand experience. Conversely, the information provided by the Department at the hearing was not based on the Department witness's firsthand experience or even firsthand conversations with claimant, but rather on "information that's listed in the [Department's] file." July 14, 2021 Transcript at 8. Because the Department's information was hearsay, it had less probative value than claimant's sworn firsthand testimony regarding her ability to obtain transportation to work. The persuasive evidence showed that claimant was capable of accepting and reporting for any suitable work opportunities within her labor market, and was therefore available for work during all the weeks at issue.

The Department did not assert, and the record does not otherwise show, that claimant was unwilling to accept any work opportunities as defined by OAR 471-030-0036(3)(a) or that claimant imposed conditions upon her availability that substantially reduced her ability to return to work. Nor does the record show that claimant was not physically present in her normal labor market during all of the weeks at issue. Claimant resided in Stanfield and later, Hermiston, during the weeks at issue, and both towns are located in claimant's normal labor market.

In sum, claimant was available for work and eligible to receive unemployment insurance benefits for all of the weeks at issue, including from November 8, 2020 through March 13, 2021 (weeks 46-20 through 10-21) and March 28, 2021 through April 7, 2021 (weeks 13-21 through 15-21).

**DECISION:** Order No. 21-UI-170659 is set aside, as outlined above. *La Orden de la Audiencia 21-UI-170659 se deja a un lado, de acuerdo a lo indicado arriba.*

S. Alba and A. Steger-Bentz;  
D. Hettle, not participating.

**DATE of Service: September 10, 2021**

**NOTE:** This decision reverses 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 revoca 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, Oregon 97310 or visit the Court of Appeals website at 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](http://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 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 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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