

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0668**

*Affirmed*  
*Ineligible Weeks 16-20 through 27-20*

**PROCEDURAL HISTORY:** On October 14, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work from April 12, 2020 through July 4, 2020 (weeks 16-20 through 27-20) and was therefore ineligible for benefits for those weeks (decision # 114957). Claimant filed a timely request for hearing. On November 23, 2020, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for December 8, 2020 at 1:30 p.m., at which claimant failed to appear. On December 8, 2020, ALJ Janzen issued Order No. 20-UI-157378, dismissing claimant's hearing request for failure to appear. On December 14, 2020, claimant filed a timely request to reopen the December 8, 2020 hearing.

On July 14, 2021, OAH mailed notice of a hearing scheduled for July 29, 2021 at 10:45 a.m. to consider claimant's request to reopen the December 8, 2020 hearing, and if allowed, the merits of decision # 114957. On July 29, 2021, ALJ Janzen conducted a hearing, and on July 30, 2021 issued Order No. 21-UI-171483, allowing claimant's request to reopen the December 8, 2020 hearing and affirming decision # 114957. On August 16, 2021, claimant filed an application for review of Order No. 21-UI-171483 with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** EAB considered claimant's written argument to the extent it was based on the hearing record. In that argument, claimant asserted that the Department should have deemed him eligible for unemployment insurance benefits because a temporary administrative rule adopted in response to the COVID-19 pandemic, OAR 471-030-0070(5)(a), exempted him from the "available for work" requirement set forth by ORS 657.155. Claimant's Written Argument.

To be eligible to receive unemployment insurance benefits, unemployed individuals must be able to work, available for work, and actively seek work during each week claimed. ORS 657.155(1)(c). An individual is not considered "available for work" in any week in which the individual spent the major portion of the week outside of the United States unless the individual spent the major portion of the week: (1) in Canada and was authorized to work in Canada, or (2) in a country included in the Compact

of Free Association with the United States of America.<sup>1</sup> OAR 471-030-0036(3)(i) (December 8, 2019). Order No. 21-UI-171483 concluded, correctly, that claimant was not available for work and therefore not eligible for benefits during the weeks of April 12, 2020 through July 4, 2020 because claimant was outside of the United States, in Kenya. Order No. 21-UI-171483 at 5-6.

While it is correct that due to the unique situations arising under COVID-19, temporary unemployment insurance provisions exist that can modify the “available for work” analysis, these temporary COVID-19 “available for work” provisions do not apply to claimant’s situation. Because the relevant time period are the weeks of April 12, 2020 through July 4, 2020, the applicable temporary COVID-19 “available for work” provision is temporary rule OAR 471-030-0070(5)(a) (effective March 8, 2020 through September 12, 2020). OAR 471-030-0070(5)(a) provides as follows:

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[.]

OAR 471-030-0070(5)(a) does not apply to claimant’s situation because claimant was not available for work under ORS 657.155(2)<sup>2</sup> and OAR 471-030-0036(3)(i). Together, these provisions 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. OAR 471-030-0070(5)(a) by its language applies only to ORS 657.155(1)(c) and not to ORS 657.155(2). The Department’s witness stated at hearing that OAR 471-030-0070(5)(a) was not intended to apply to claimant’s claims for benefits because he was outside of his labor market due to being outside of the United States. Transcript at 31-32. We defer to the Department’s reasonable interpretation of its own rule and conclude that temporary rule OAR 471-030-0070(5)(a) does not exempt individuals in claimant’s circumstances from the requirements of ORS 657.155(2) and OAR 471-030-0036(3)(i). *See Isayeva v. Employment Department*, 266 Or. App. 806, 340 P.3d 82, 85 (2014), *citing Callaway v. Employment Department*, 225 Or. App. 650, 654-55 (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

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<sup>1</sup> The countries included in the Compact of Free Association with the United States of America are the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. *See* 48 U.S.C. §§ 1901-1973.

<sup>2</sup> ORS 657.155(2) provides as follows:

- (a) An individual who leaves the individual’s normal labor market area for the major portion of any week is presumed to be unavailable for work within the meaning of this section.
- (b) The presumption described in paragraph (a) of this subsection may be overcome if the individual establishes to the satisfaction of the director that the individual:
  - (A) Has conducted a bona fide search for work and has been reasonably accessible to suitable work in the labor market area in which the individual spent the major portion of the week to which the presumption applies; or
  - (B) Was required to be outside the individual’s normal labor market area to apply for suitable employment within the individual’s normal labor market.

source of law.”). Thus, temporary rule OAR 471-030-0070(5)(a) does not exempt individuals in claimant’s circumstances from the “available for work” requirements set forth by ORS 657.155(2) and OAR 471-030-0036(3)(i). For that reason, EAB rejects claimant’s argument that the Department should have considered claimant eligible for benefits because he was exempt from the “available for work” requirement by temporary rule OAR 471-030-0070(5)(a).

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. 21-UI-171483 is affirmed.

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

**DATE of Service:** September 16, 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](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 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 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.

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