

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0741**

*Affirmed*  
*Ineligible Weeks 26-21 through 30-21*

**PROCEDURAL HISTORY:** On July 20, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work from June 27, 2021 through July 17, 2021 (weeks 26-21 through 28-21) and therefore ineligible for unemployment insurance benefits for those weeks and until the reason for denial had ended (decision # 103545). Claimant filed a timely request for hearing. On August 30, 2021, ALJ Hoppe conducted a hearing, and on September 1, 2021 issued Order No. 21-UI-173831, affirming decision # 103545. On September 9, 2021, claimant filed an application for review of Order No. 21-UI-173831 with the Employment Appeals Board (EAB). On September 16, 2021, ALJ Hoppe issued Amended Order No. 21-UI-174857, modifying decision # 103545 by concluding that claimant was not available for work from June 27, 2021 through July 31, 2021 (weeks 26-21 through 30-21) and therefore ineligible to receive benefits for those weeks.<sup>1</sup> This matter comes before EAB based on claimant's September 9, 2021 application for review, which EAB construes to apply to Amended Order No. 21-UI-174857.

**WRITTEN ARGUMENT:** EAB considered claimant's written argument in reaching this decision.

**FINDINGS OF FACT:** (1) On May 28, 2021, claimant filed an initial claim for unemployment insurance benefits. Claimant claimed benefits for the weeks from June 27, 2021 through July 31, 2021 (weeks 26-21 through 30-21), the weeks at issue. The Department denied benefits for weeks 26-21 through 28-21, and paid claimant benefits for weeks 29-21 and 30-21.<sup>2</sup>

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<sup>1</sup> Although Amended Order No. 21-UI-174857 stated that the order affirmed decision # 103545, the order modified that decision by adding the additional weeks claimed and denied by the Department after the date decision # 103545 was issued. Amended Order No. 21-UI-174857 at 4.

<sup>2</sup> EAB has taken notice of these facts, which are contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). Any party that objects to our taking notice of this information must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the noticed facts will remain in the record.

(2) During all the weeks at issue, claimant's permanent residence and normal labor market were in the United States.

(3) From June 25, 2021 through July 29, 2021, claimant traveled to, and remained in, Egypt to network with influential former classmates whom claimant believed would be helpful in assisting claimant with finding engineering work. While in Egypt, claimant continued to apply for job opportunities within the United States.

**CONCLUSIONS AND REASONS:** Claimant was not available for work during the weeks 26-21 through 30-21.

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). An individual is not available for work in any week claimed under ORS 657.155 if the individual resides or spends the major portion of the week:

- (A) In Canada unless the individual is authorized to work in Canada;
- (B) In a country not included in the Compact of Free Association with the United States of America;
- (C) outside of the United States, District of Columbia or any territory or political subdivision that is directly overseen by the United States federal government; except,
  - (i) If the individual is the spouse or domestic partner of an individual stationed at a military base or embassy located outside of the United States;
  - (ii) Job opportunities exist on the military base or embassy for family members of those stationed there;
  - (iii) The individual lives within a reasonable commuting distance to job opportunities at the military base or embassy; and
  - (iv) The individual is willing to accept the conditions and terms of the available employment provided they are not inconsistent with ORS 657.195.

OAR 471-030-0036(3)(i) (December 8, 2019). 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. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

The record show that during the weeks at issue, claimant spent all or the major portion of each week physically located in Egypt, which is neither a country included in the Compact of Free Association with

the United States of America<sup>3</sup>, nor a territory or political subdivision that is directly overseen by the United States federal government. Further, the record does not show that claimant was, during the weeks at issue, a spouse or domestic partner of an individual stationed at a military base or embassy located outside the United States. For these reasons, and based on the express language of OAR 471-030-0036(3)(i), claimant was not available for work during the weeks at issue, and is therefore ineligible for benefits for those weeks.

**DECISION:** Order No. 21-UI-173831 is affirmed.

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

**DATE of Service: October 14, 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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<sup>3</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.



# 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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