

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-1083**

*Affirmed*  
*Ineligible Weeks 42-21 through 43-21*

**PROCEDURAL HISTORY:** On November 5, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not able to work from October 17, 2021 through October 30, 2021 (weeks 42-21 through 43-21) and was denied unemployment insurance benefits for those weeks (decision # 95707). Claimant filed a timely request for hearing. On December 8, 2021, ALJ Ramey conducted a hearing, and on December 9, 2021 issued Order No. 21-UI-181519, affirming decision # 95707. On December 17, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Claimant was employed as a human resources specialist in Medford, Oregon.

(2) On October 18, 2021, while claimant was working her normal shift, claimant's friend contacted claimant to tell her that the friend had tested positive for COVID-19. Because claimant had recently been around her friend and was therefore exposed to the virus, claimant left work for the remainder of the day to prevent the potential spread of the virus among her coworkers.

(3) On October 19, 2021, claimant was tested for the COVID-19 virus.

(4) On October 21, 2021, claimant learned that she had tested positive for COVID-19. Claimant received a letter from her employer the same day informing her that she would need to quarantine and could not return to work until November 1, 2021. Although the employer and claimant explored allowing claimant to work from home, the employer ultimately determined that telework would not be possible. Claimant was not eligible for paid sick leave or any other form of paid time off during this quarantine period. Claimant filed her initial claim for unemployment benefits online. On her initial claim, claimant indicated that she was unable to work full-time because she had tested positive for COVID-19.

(5) Claimant claimed benefits for the weeks of October 17, 2021 through October 30, 2021 (weeks 42-21 through 43-21), the weeks at issue. Claimant did not perform any job-seeking activities during the weeks at issue, however, she checked in with her current employer daily to see if they had any available

work for her to perform from her home. The Department did not pay claimant benefits for either week. Despite her positive COVID-19 test, claimant remained asymptomatic during the weeks at issue and would have worked had her employer allowed her to do so.

**CONCLUSIONS AND REASONS:** Claimant was not able to work, available to work, and did not actively seek work during weeks 42-21 through 43-21 and was therefore ineligible for 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). Because the Department did not pay claimant benefits for weeks 42-21 through 43-21, claimant has the burden to prove that the Department should have paid benefits for 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).

An individual shall be considered able to work in a particular week for purposes of ORS 657.155(1)(c) only if physically and mentally capable of performing the work the individual is actually seeking during all of the week. Temporary OAR 471-030-0036(2) (September 26, 2021 through March 24, 2022). An individual occasionally and temporarily disabled for less than half of the week is not considered unable to work for that week. Temporary OAR 471-030-0036(2)(a). An individual prevented from working full time or during particular shifts due to a permanent or long-term “physical or mental impairment” as defined in 29 CFR §1630.2(h) shall not be deemed unable to work solely on that basis so long as the individual remains available for some work. Temporary OAR 471-030-0036(2)(b).

Claimant was not “able to work” during the weeks 42-21 and 43-21. The record shows that during more than half of both of those weeks, claimant was sick with the COVID-19 virus. Furthermore, claimant’s employer mandated that claimant quarantine and remain away from the workplace for ten days until November 1, 2021. Although claimant believed that she was physically capable of performing work despite her COVID-19 infection due to the lack of symptoms she experienced, the easy transmissibility of the COVID-19 virus made her a health risk to her coworkers in the workplace and therefore physically incapable of performing her work for purposes of the “able to work” rule found in Temporary OAR 471-030-0036(2). The lack of a telework option for claimant, which might have otherwise allowed her to work from home, does not change the conclusion that claimant was not physically capable of performing work during the weeks at issue. Likewise, the lenient standard of Temporary OAR 471-030-0036(2)(b) does not apply because claimant presented no evidence to suggest that her COVID-19 illness was a permanent or long-term physical or mental impairment. Because the record shows that claimant was not able to work for more than half of the weeks at issue, claimant was ineligible to receive benefits for those weeks.

Likewise, claimant was not “available for work” during the weeks at issue. Temporary OAR 471-030-0036(3) provides in relevant part that for a person shall be considered available for work if, at a minimum, the individual is:

\* \* \*

(b) Capable of accepting and reporting for suitable work opportunities within the labor market in which work is being sought, including temporary and part time opportunities[.]

\* \* \*

During the weeks at issue, relevant CDC directives provided that individuals who were confirmed COVID-19 positive should quarantine at their homes for a period of ten days.<sup>1</sup> The record shows that claimant's employer followed this directive during the weeks at issue and mandated that claimant remain quarantined at her home and away from the workplace for a ten-day period. Furthermore, it is reasonable to conclude that, as was the case with claimant's employer, any other potential employer would have followed the same ten-day quarantine directive thereby making claimant incapable of accepting and reporting for other suitable work opportunities should such opportunities have come available. Claimant provided no evidence to the contrary. Because claimant was not capable of accepting and reporting for suitable work opportunities within her labor market during the weeks at issue, claimant was not "available for work" for purposes of temporary OAR 471-030-0036(3), and is therefore ineligible for benefits for those weeks.

Finally, the record shows that claimant did not "actively seek work" during the weeks at issue. To be actively seeking work as required under ORS 657.155(1)(c), an individual "must conduct at least five work-seeking activities per week," with two of the five work-seeking activities being direct contact with an employer who might hire the individual. Temporary OAR 471-030-0036(4)(a). "Direct contact" means "making contact with an employer . . . to inquire about a job opening or applying for job openings in the manner required by the hiring employer." Temporary OAR 471-030-0036(4)(a)(B). For individuals who are temporarily unemployed, temporary OAR 471-030-0036(4)(b) defines "actively seeking work" in pertinent part as follows:

(A) They are considered to be actively seeking work when they remain in contact with their regular employer and are capable of accepting and reporting for any suitable work with that employer;

(B) There is a reasonable expectation that they will be returning to work for their regular employer. The work the individual is returning to must be full time or pay an amount that equals or exceeds their weekly benefit amount;

(C) The department will not consider the individual to be temporarily unemployed if they were separated from their employer for reasons other than a lack of work, the work the individual is returning to is not with their most recent employer, or the length the individual is unemployed is longer than the period described in subsection (D) of this section[.]

The record shows that claimant did not "actively seek work" during the weeks at issue. As an initial matter, claimant was not "temporarily unemployed" for purposes of temporary OAR 471-030-0036(4)(b) because the record shows that claimant's "separation" from her employer during the weeks at

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<sup>1</sup> In December 2021, the CDC revised their guidelines to direct quarantine for a minimum period of five days for individuals who test positive for COVID-19.

issue was due only to her COVID-19 illness and the requirement that she quarantine, which are reasons “other than a lack of work.” Temporary OAR 471-030-0036(4)(b)(C).<sup>2</sup> Because claimant was not “temporarily unemployed” for purposes of the rule, claimant was required to conduct at least five work-seeking activities per week, with two of the five work-seeking activities being direct contact with an employer who might hire the individual. The record shows that during the weeks at issue, claimant conducted no work-seeking activities. Claimant therefore did not “actively seek work” during the weeks at issue, and is therefore ineligible for benefits for those weeks.

**DECISION:** Order No. 21-UI-181519 is affirmed.

S. Alba, D. Hettle and A. Steger-Bentz.

**DATE of Service:** January 26, 2022

**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.

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<sup>2</sup> Even if claimant were to be considered “temporarily unemployed” she still would not have been able to meet her burden to show that she actively sought work because although she remained in contact with her employer during the weeks at issue, she was not “capable of accepting and reporting for any suitable work with that employer” due to her COVID-19 illness. Temporary OAR 471-030-0036(4)(b)(A).



# 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 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**  
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711  
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