

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-1091**

*Affirmed*  
*Ineligible Weeks 42-21 through 48-21*

**PROCEDURAL HISTORY:** On November 12, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work during the weeks of October 17, 2021 through November 6, 2021 (weeks 42-21 through 44-21) and was denied unemployment insurance benefits for those weeks and until the reason for denial had ended (decision # 151328). Claimant filed a timely request for hearing. On December 13, 2021, ALJ Kaneshiro conducted a hearing at which the employer failed to appear, and issued Order No. 21-UI-181743, modifying decision # 151328 by concluding that claimant was not able or available for work during the weeks from October 17, 2021 through December 4, 2021 (weeks 42-21 through 48-21) and was ineligible to receive benefits for those weeks. On December 17, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) On March 11, 2021, claimant filed an initial claim for unemployment insurance benefits.

(2) Safeway Stores Inc. employed claimant as a manager in the meat department.

(3) On or about September 21, 2021, claimant was diagnosed with COVID-19. Claimant took ten days off from work due to his illness. Thereafter, claimant returned to work for one day, but discovered that due to lingering effects from his illness, he “couldn’t do it, ‘cause it was just too much.” Transcript at 16. Claimant also lacked consistent childcare for his one-year-old daughter, which caused him to feel “anxiety.” Transcript at 15. Claimant went to his medical provider and was provided a note that recommended that he be placed on a leave of absence due to his illness until January 1, 2022.

(4) On October 8, 2021, the employer placed claimant on a leave of absence based on the medical provider’s recommendation.

(5) Claimant claimed benefits for the weeks of October 17, 2021 through December 4, 2021 (weeks 42-21 through 48-21), the weeks at issue. The Department paid benefits to claimant only for weeks 42-21

through 44-21. During the weeks at issue, claimant's medical provider had not released claimant to return to work and claimant was not capable of accepting any other work.

**CONCLUSIONS AND REASONS:** Claimant was not able to work during weeks 42-21 through 48-21 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). 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).

Where the Department has paid benefits, it has the burden to prove benefits should not have been paid; conversely, where benefits have not been paid claimant has the burden to prove that the Department should have paid benefits. *See Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

Claimant was not able to work during weeks 42-21 through 48-21. The record shows that during those weeks claimant was on an approved medical leave of absence from the employer. The medical leave of absence was recommended by claimant's medical provider, who did not believe claimant should be working during this time period due to claimant's lingering health impacts from COVID-19 and claimant's anxiety caused by his lack of childcare. Claimant also testified that during the weeks at issue, he would not have been able to accept an offer of work from any other employer due to his situation. Transcript at 20. Finally, claimant's medical provider did not release claimant to return to work until January 1, 2022. Because the record shows that claimant was not able to work during any portion of any of weeks 42-21 through 48-21, claimant was ineligible to receive benefits for those weeks.

**DECISION:** Order No. 21-UI-181743 is affirmed.

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

**DATE of Service:** January 25, 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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# 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.

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