

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0112**

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

**PROCEDURAL HISTORY:** On November 8, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was able, available, and actively seeking work from October 17, 2021 through October 30, 2021 (weeks 42-21 and 43-21) and was therefore eligible to receive unemployment insurance benefits for those weeks if otherwise eligible (decision # 124620). The employer filed a timely request for hearing. On January 11, 2022, ALJ McGorin conducted a hearing and issued Order No. 22-UI-183804, affirming decision # 124620. On January 17, 2022, the employer filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Beginning on March 1, 2013 and continuing throughout the time period relevant to this decision, St. Charles Health System Inc. employed claimant as a registered nurse.

(2) On or about August 2021, the employer, in compliance with a state mandate, required that claimant either get vaccinated against COVID-19 or request a religious or medical exception. Claimant requested a religious exception, which the employer granted. The reasonable accommodation the employer offered claimant in connection with the exception was to take an unpaid leave of absence. Claimant accepted the accommodation and began an unpaid leave of absence beginning mid-October 2021.

(3) Claimant did not get vaccinated against COVID-19. Due to the state mandate, direct patient care work as a registered nurse in claimant's labor market during the weeks at issue required claimant to be vaccinated against COVID-19.

(4) On October 21, 2021, claimant filed an initial claim for unemployment insurance benefits. Claimant claimed benefits for the weeks from October 17, 2021 through October 30, 2021 (weeks 42-21 and 43-21), the weeks at issue. The Department paid claimant benefits for those weeks.

(5) During the weeks at issue, claimant was willing to work full time, part time, and accept temporary work opportunities. Claimant sought work within her labor market with a realty company as an

administrative assistant and as a real estate sales person. Claimant also sought work within her labor market with an online retailer as a remote worker, and with the employer as a fully remote triage nurse. The work claimant sought during the weeks at issue did not require claimant to be vaccinated against COVID-19.

(6) During the weeks at issue, claimant conducted five work-seeking activities per week. Each week, she made two direct contacts with potential employers inquiring about job openings. The job openings she inquired about were administrative assistant and salesperson work with the realty company, the remote work with the online retailer, and the fully remote triage nurse work with the employer.

(7) Claimant was physically and mentally capable of performing the work she sought during the weeks at issue.

**CONCLUSIONS AND REASONS:** Claimant was able, available, and actively seeking work from October 17, 2021 through October 30, 2021 (weeks 42-21 through 43-21), and is eligible to receive unemployment insurance benefits for those weeks.

To be eligible to receive benefits, unemployed individuals must be available for work during each week claimed as defined by OAR 471-030-0036(3) (December 8, 2019); ORS 657.155(1)(c). However, during a state of emergency declared by the Governor under ORS 401.165, or a public health emergency declared under ORS 433.441, the Department may waive, otherwise limit, or modify the requirements of OAR 471-030-0036. OAR 471-030-0071 (effective September 13, 2020). Temporary OAR 471-030-0036(3) (September 26, 2021 through March 24, 2022) provides that a person shall be considered available for work if, at a minimum, the individual is:

(a) Willing to work full time, part time, and accept temporary work opportunities, 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 suitable work opportunities within the labor market in which work is being sought, including temporary and part time opportunities[.]

Temporary OAR 471-030-0036(3) (September 26, 2021 through March 24, 2022).

Claimant was available for work during the weeks at issue. First, the record shows that claimant was willing to work full time, part time, and accept temporary work opportunities. Moreover, the preponderance of the evidence shows that claimant was capable of accepting and reporting for suitable work opportunities within her labor market. During the weeks at issue, claimant was willing to accept and report for work with a realty company as an administrative assistant and as a real estate sales person, as well as work with an online retailer as a remote worker, and with the employer as a fully remote triage nurse. Although claimant was not vaccinated against COVID-19, claimant was not required by state mandate to be vaccinated against COVID-19 to perform the above-mentioned work. Because claimant's vaccination status would not hinder her ability to accept or report for work opportunities of the type mentioned above, the preponderance of evidence supports the conclusion that claimant was capable of accepting and reporting for suitable work opportunities in her labor market during the weeks at issue.

The record shows that during the weeks at issue, claimant was not capable of accepting and reporting for work as a registered nurse providing direct patient care, because that work required claimant to be vaccinated against COVID-19. However, the fact that during the weeks at issue claimant was capable of accepting and reporting for the work with the realty company, online retailer, and remote work for the employer—none of which her to be vaccinated—is sufficient to satisfy Temporary OAR 471-030-0036(3)(b). That is because that provision requires claimant be “capable of accepting and reporting for suitable work opportunities within the labor market in which work is being sought.” This language is broad and covers a scenario such as the one presented here, where an individual is capable of accepting some, but not all, suitable work opportunities. Interpreting Temporary OAR 471-030-0036(3)(b) in this less restrictive fashion is warranted because the previous administrative rule that Temporary OAR 471-030-0036(3) replaced contained several restrictive textual elements that do not now appear in Temporary OAR 471-030-0036(3). In particular, former OAR 471-030-0036(3)(b) included the modifier “any” before “suitable work opportunities,” which does not appear in the language of the existing rule. Compare OAR 471-030-0036(3) (effective August 2, 2020 through December 26, 2020) (“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[.]”) (emphasis added).<sup>1</sup> It is logical to conclude that the Department removed this modifier deliberately and with the intent to establish a less restrictive standard. That conclusion is bolstered by language contained in the Department filing statement accompanying Temporary OAR 471-030-0036(3), which explains that the justification for the rule amendment was to provide “more clear guidance . . . regarding the availability of UI benefits and *expands the availability of benefits to people still impacted by COVID-19.*” See Temporary Administrative Order ED 4-2021, “Justification for Temporary Filing,” available at, <http://records.sos.state.or.us/ORSOSWebDrawer/Recordhtml/8581188>. (emphasis added).

With few exceptions that do not apply here, 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) (September 26, 2021 through March 24, 2022). “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). The record shows that claimant actively sought work during the weeks at issue. During those weeks, claimant conducted five work-seeking activities each week, including two direct contacts with potential employers inquiring about job openings. The job openings she inquired about were administrative assistant and salesperson work with a realty company, remote work with an online retailer, and fully remote triage nurse work with the employer.

Finally, 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). The record shows that during the weeks at issue, claimant sought work within her labor market with a realty company as an administrative assistant and as a real estate sales person. Claimant also sought work within her labor market with an online retailer as a remote worker, and with the

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<sup>1</sup> Additionally, OAR 471-030-0036 (effective August 2, 2020 through December 26, 2020) also contained a provision, at subpart (3)(c), that required an individual to be “[n]ot imposing conditions which substantially reduce the individual’s opportunities to return to work at the earliest possible time[.]” This provision does not appear in Temporary OAR 471-030-0036(3).

employer as a fully remote triage nurse. Claimant was physically and mentally capable of performing all of the work listed above. As such, the record shows that claimant was able to work during the weeks at issue.

For these reasons, the record shows that claimant was able, available, and actively seeking work during the weeks at issue, and is eligible to receive unemployment insurance benefits for those weeks.

**DECISION:** Order No. 22-UI-183804 is affirmed.

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

**DATE of Service:** February 28, 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 ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

**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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