

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0531**

*Modified*  
*Eligible Weeks 50-20 through 07-21 and Week 10-21*

**PROCEDURAL HISTORY:** On March 12, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant failed to provide information in accordance with the Department's rules and therefore was ineligible for unemployment insurance benefits for the weeks of December 6, 2020 through February 20, 2021 (weeks 50-20 through 07-21), and until the reason for the denial had ended (decision # 70941). Claimant filed a timely request for hearing. On April 11, 2022, ALJ Logan conducted a hearing, and on April 20, 2022 issued Amended Order No. 22-UI-191824,<sup>1</sup> modifying decision # 70941 by concluding that claimant had not failed to provide information but was unavailable for work and was therefore ineligible for benefits for the weeks including December 6, 2020 through February 20, 2021 (weeks 50-20 through 07-21) and March 7, 2021 through March 13, 2021 (week 10-21). On May 2, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered claimant's argument to the extent it was based on the record.

**EVIDENTIARY MATTER:** EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is, first, decision # 7094, which has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. The second piece of additional evidence is the notice of hearing in this case, which has been marked as EAB Exhibit 2, and a copy provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 and EAB Exhibit 2 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 exhibits will remain in the record.

<sup>1</sup> ALJ Logan issued Amended Order No. 22-UI-191824 to correct typographical errors in Order No. 22-UI-191824, which he issued on April 19, 2022. See Amended Order No. 22-UI-191824 at 1.

**FINDINGS OF FACT:** (1) On October 31, 2019, claimant filed an initial claim for unemployment insurance benefits.

(2) Claimant claimed benefits for the weeks including December 6, 2020 through February 20, 2021 (weeks 50-20 through 07-21) and March 7, 2021 through March 13, 2021 (week 10-21). These are the weeks at issue. The Department did not pay claimant for weeks 50-20 through 05-21, but did pay claimant for weeks 06-21, 07-21, and 10-21.<sup>2</sup>

(3) When claimant claimed the weeks at issue, she indicated that she was away from her residence in Bend, Oregon for three or more days each week. The Department representative who was adjudicating claimant's weekly claims for benefits needed more information to determine whether claimant was outside of her labor market area during the weeks at issue. In December 2020 and January and February 2021, the Department sent claimant several letters seeking the information the Department representative needed regarding claimant being outside of her labor market area.

(4) On December 28, 2020, January 4, 2021, January 11, 2021, January 17, 2021, January 29, 2021, February 9, 2021, and February 12, 2021, claimant responded to the Department's letters. In her responses, claimant advised that she was in Arizona or Nevada, and that she and her husband had sold their home in Bend and were planning to relocate to Arizona or Nevada if they could find affordable housing there.

(5) The Department representative adjudicating claimant's weekly claims for benefits was unaware that claimant responded to the letters with the information the representative needed. On February 25, 2021, the Department representative called claimant and left a voicemail requesting information regarding claimant being outside of her labor market area by March 1, 2021.

(6) On March 12, 2021, the Department issued decision # 70941 denying benefits for weeks 50-20 through 07-21 on the basis that claimant had not provided the requested information by March 1, 2021.

**CONCLUSIONS AND REASONS:** Amended Order No. 22-UI-191824 is affirmed to the extent it concluded that claimant did not fail to provide information in accordance with the Department's rules and was not ineligible to receive benefits for the weeks at issue on that basis. Amended Order No. 22-UI-191824 is reversed to the extent it concluded that claimant was ineligible to receive benefits for the weeks at issue because she was not available for work.

**Failure to Provide Information.** Under ORS 657.155(1)(b), in order to be eligible to receive benefits with respect to any week, an individual must make "a claim for benefits with respect to such week in accordance with ORS 657.260." ORS 657.260(1) provides that claims for benefits shall be filed in accordance with such regulations as the Department may prescribe. OAR 471-030-0025 (January 11, 2018) states:

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<sup>2</sup> EAB has taken notice of this fact, which is 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 fact will remain in the record.

- (1) With all claims, an individual shall furnish the Director with . . . information required for processing their claim. \* \* \*
- (2) The claimant is required to furnish such information required for processing their claim within the time frame provided by the Director or an authorized representative of the Employment Department.

\* \* \*

The Department representative requested that claimant submit information regarding being outside of her labor market area by March 1, 2021. The record shows that on December 28, 2020, January 4, 2021, January 11, 2021, January 17, 2021, January 29, 2021, February 9, 2021, and February 12, 2021, claimant responded to Department's letters seeking this information. In her responses, claimant advised that she was in Arizona or Nevada, and that she and her husband had sold their home in Bend, Oregon and were planning to relocate to Arizona or Nevada if they could find affordable housing there. Thus, the record shows both that claimant provided the requested information regarding being outside of her labor market area and that she provided the information within the timeframe required by the Department. Therefore, claimant did not fail to provide information in accordance with the Department's rules and is not ineligible to receive benefits for the weeks at issue on that basis.

**Available for Work.** 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). For an individual to be considered "available for work" for purposes of ORS 657.155(1)(c), they must be:

\* \* \*

(d) Physically present in the normal labor market area as defined by section (6) of this rule, every day of the week, unless:

- (A) The individual is actively seeking work outside his or her normal labor market area; or
- (B) The individual is infrequently absent from the normal labor market area for reasons unrelated to work search, for less than half of the week, and no opportunity to work or referral to work was missed by such absence.

OAR 471-030-0036(3) (August 2, 2020 through December 26, 2020).

The order under review concluded that claimant did not fail to provide information in accordance with the Department's rules. Amended Order No. 22-UI-191824 at 2. However, the order then went beyond the scope of the administrative decision on appeal and concluded that claimant was ineligible to receive benefits for the weeks at issue because she was not available for work due to being in Arizona or Nevada during each of the weeks at issue. Amended Order No. 22-UI-191824 at 3. Expanding the scope of review to include the available for work issue was improper because claimant was not on notice that the issue would be addressed at hearing and did not waive her right to notice.

Neither decision # 70941 nor the notice of hearing in this case put claimant on notice that her availability for work during the weeks at issue would be addressed at hearing. The findings and legal conclusion of the administrative decision relate only to the failure to provide information issue. EAB Exhibit 1. While decision # 70941 makes a passing reference to ORS 657.155, which is the statute that contains the available for work requirement, that citation alone is not sufficient to put claimant on notice that availability would be an issue at hearing. EAB Exhibit 1 at 2. ORS 657.155 also contains, at subpart (1)(b), the requirement that to be eligible to receive benefits, an individual has to make their claim “in accordance with ORS 657.260.” ORS 657.260, in turn, requires claims for benefits to be filed in accordance with the Department’s rules, including OAR 471-030-0025, the rule that requires claimants to furnish information within the timeframe provided by a Department representative. Further, decision # 70941 cites ORS 657.155 in a list in which ORS 657.155 immediately precedes ORS 657.260. EAB Exhibit 1 at 2. Thus, the administrative decision’s citation to ORS 657.155 was intended to relate to the failure to provide information issue and therefore did not put claimant on notice that the available for work issue was implicated.

Likewise, the notice of hearing makes no mention of the available for work issue and states merely that the issue to be considered, other than jurisdictional matters, is “[w]hether claimant failed to furnish information in accordance with prescribed rules” and then cites ORS 657.155, 657.260, and OAR 471-030-0025. EAB Exhibit 2 at 1. This sequence of citations is consistent with the failure to provide information issue, not the available for work issue. Under OAR 471-040-0025(8), issues not previously considered may not be addressed at hearing unless the ALJ has afforded the parties an opportunity to object. OAR 471-040-0025(8) also states that “in no event shall the administrative law judge accept jurisdiction of a new issue and proceed with hearing on such issue when an interested party to such new issue has not waived right to notice.” There is no indication from the record that claimant waived her right to notice of the available for work issue or that she was afforded an opportunity to object to the ALJ reaching the issue.

Because claimant was not on notice of the available for work issue and did not waive her right to notice, the ALJ did not provide her with a reasonable opportunity for a fair hearing as to that issue, as required by ORS 657.270. The order under review is therefore reversed as to the portion of the order that concluded claimant is ineligible to receive benefits for the weeks at issue because she was not available for work for those weeks.

**DECISION:** Amended Order No. 22-UI-191824 is modified, as outlined above.

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

**DATE of Service:** July 20, 2022

**NOTE:** This decision reverses an order that denied benefits. Please note that payment of benefits, if any are owed, may take approximately a week for the Department to complete.

**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.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



# 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 ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄຳຕັດສິນນີ້.

**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 الاستئناف 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  
[www.Oregon.gov/Employ/eab](http://www.Oregon.gov/Employ/eab)

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