

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0660**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On June 23, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work from November 29, 2020 through June 19, 2021 (weeks 49-20 through 24-21) and therefore was not eligible for unemployment insurance benefits for those weeks and until the reason for the denial had ended (decision # 122210). Claimant filed a timely request for hearing. On May 20, 2022, ALJ Scott conducted a hearing, and on May 23, 2022 issued Order No. 22-UI-194310, modifying decision # 122210 by concluding that claimant was not available for work from November 29 through December 26, 2020 (weeks 49-20 through 52-20) and May 23 through July 3, 2021 (weeks 21-21 through 26-21), and therefore was not eligible for benefits for those weeks. On June 10, 2022, claimant filed an application for review with the Employment Appeal Board (EAB).

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

**FINDINGS OF FACT:** (1) On June 17, 2021, claimant filed an initial claim for unemployment insurance benefits. Claimant retroactively claimed benefits for the weeks from November 29 through December 26, 2020 (weeks 49-20 through 52-20) and May 23 through July 3, 2021 (weeks 21-21 through 26-21). Those are the weeks at issue. The Department did not pay claimant benefits for those weeks.

(2) Claimant had a daughter who was four or five years old during the weeks at issue. Prior to the weeks at issue, claimant's mother watched her daughter during the day and evenings. When claimant's mother watched her daughter, claimant was available to work a swing shift (a shift from 2:00 p.m. to 10:00 p.m.). However, prior to November 29, 2020, claimant's mother stopped watching claimant's daughter. Claimant asked her daughter's father to watch her daughter, but he would not do so. Claimant looked for a babysitter to watch her daughter during swing-shift hours but had difficulty finding anyone to do so because of the COVID-19 pandemic. Claimant also did not believe she could afford daycare in the community where she lived. Because claimant was without childcare and had to stay home to watch her daughter, she was not available to work swing shifts during the weeks at issue.

(3) During the weeks at issue, claimant sought work as a caregiver. This type of work was customarily performed in claimant's labor market area 24 hours per day, all days of the week. Claimant's labor market area was Hood River, Oregon and the surrounding area.

**CONCLUSIONS AND REASONS:** Order No. 22-UI-194310 is set aside and this matter remanded for further development of the record.

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:

(a) Willing to work full time, part time, and accept temporary work opportunities, during all of the usual hours and days of the week customary for the work being sought, 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 any suitable work opportunities within the labor market in which work is being sought, including temporary and part time opportunities; and

(c) Not imposing conditions which substantially reduce the individual's opportunities to return to work at the earliest possible time; and

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

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

However, OAR 471-030-0036(4) provides, in pertinent part, that "[n]otwithstanding the provisions of OAR 471-030-0036(3), an individual who is the parent . . . of a child under 13 years of age, who is not willing to or capable of working a particular shift because of a lack of care for that child . . . shall be considered available for work if:

(a) The work the individual is seeking is customarily performed during other shifts in the individual's normal labor market area as defined by OAR 471-030-0036(6); and

(b) The individual is willing to and capable of working during such shift(s)."

Furthermore, during a state of emergency declared by the Governor under ORS 401.165, the Department may waive, otherwise limit, or modify the requirements of OAR 471-030-0036. OAR 471-030-0071 (September 13, 2020). Paragraph (5) of Oregon Employment Department Temporary Rule for Unemployment Insurance Flexibility (March 8, 2020), <http://records.sos.state.or.us/ORSOSWebDrawer/Recordpdf/7604239>, provides that a person will not be deemed unavailable for work because:

\* \* \*

(b) They are home solely because they lack childcare for a child or children due to school or daycare closures or curtailments[.]

\* \* \*

The order under review concluded that claimant was not available for work during the weeks at issue. Order No. 22-UI-194310 at 3-4. At hearing, however, the Department's witness testified that the temporary COVID-19 "available for work" rule cited above was in effect during the weeks at issue and that she intended to ask claimant questions to determine whether it applied to claimant. Transcript at 7-8. Similarly, at several points during the hearing, the ALJ expressed an intention to consider whether that rule and/or OAR 471-030-0036(4) applied. Transcript at 18-19, 20-21. However, shortly after the Department's witness began her questioning, claimant abruptly disconnected from the hearing conference line. Transcript at 23. In her written argument, claimant asserted that her phone got disconnected during the hearing and that she was unable to call back into the conference line. Claimant's Written Argument. Given the state of the record, remand is required to develop the record as to whether OAR 471-030-0036(4) and/or the temporary COVID-19 rule applied to claimant during any of the weeks at issue.

As to OAR 471-030-0036(4), the record shows that during the weeks at issue, claimant was unwilling to work all the usual hours and days of the week customary for the caregiver work she sought. However, claimant was a parent of a child under 13 years of age, was not willing to work swing shifts because of a lack of care for that child, and the caregiver work claimant sought was customarily performed during other shifts in claimant's labor market area. OAR 471-030-0036(4) therefore may apply, and if so, claimant could be considered available for work under that provision.

As to the temporary COVID-19 "available for work" provision, which was in effect during the weeks at issue, claimant could be considered available for work under that provision if she was home solely because she lacked childcare for her daughter due to COVID-19-related daycare closures or curtailments. However, the Department's representative was in the midst of questioning claimant about childcare when claimant disconnected from the conference line. Transcript at 23.

Because further development of the record is necessary for a determination of whether claimant was available for work during the weeks at issue, Order No. 22-UI-194310 is reversed, and this matter is remanded.

**DECISION:** Order No. 22-UI-194310 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service:** September 15, 2022

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-194310 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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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 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.

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