

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0685**

*Modified*  
*Eligible Week 15-22*  
*Ineligible Week 16-22*

**PROCEDURAL HISTORY:** On April 27, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work and therefore was not eligible for unemployment insurance benefits for the weeks including April 10, 2022 through April 23, 2022 (weeks 15-22 through 16-22) (decision # 103128). Claimant filed a timely request for hearing. On May 25, 2022, ALJ Mott conducted a hearing, and issued Order No. 22-UI-194647, reversing decision # 103128 by concluding that claimant was available for work and therefore was eligible for benefits for the weeks including April 10, 2022 through April 23, 2022 (weeks 15-22 through 16-22). On June 14, 2022, the department filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** EAB considered the department's written argument in reaching this decision.

**FINDINGS OF FACT:** (1) On March 3, 2022, claimant filed an initial claim for unemployment insurance benefits. He subsequently claimed benefits for the weeks including April 10, 2022 through April 23, 2022 (weeks 15-22 through 16-22). The Department did not pay claimant benefits for weeks 15-22 or 16-22.

(2) On Wednesday April 13, 2022 claimant flew from Portland, Oregon to New York City to meet with several business associates. On Friday April 15, 2022 at around 6:30 p.m., claimant flew from New York City to Denmark for a job interview.

(3) Claimant spent Sunday, April 17, 2022; Monday, April 18, 2022; and Tuesday, April 19, 2022, in Denmark. On Wednesday, April 20, 2022, claimant left Denmark bound for Portland with connecting flights in Amsterdam, the Netherlands and New York City. Claimant arrived in New York City from Amsterdam on Wednesday, April 20, 2022 in the early afternoon.

(4) Denmark and the Netherlands are not countries included in the Compact of Free Association with the United States of America.

**CONCLUSIONS AND REASONS:** Claimant was available for work, and therefore eligible to receive benefits, for the week including April 10, 2022 through April 16, 2022 (week 15-22). Claimant was not available for work, and therefore ineligible to receive benefits for the week including April 17, 2022 through April 23, 2022 (week 16-22).

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 is not available for work in any week claimed if the individual resides or spends the major portion of the week:

- (A) In Canada unless the individual is authorized to work in Canada;
- (B) In a country not included in the Compact of Free Association with the United States of America; or
- (C) outside of the United States, District of Columbia or any territory or political division that is directly overseen by the United States federal government; except
  - (i) If the individual is the spouse or domestic partner of an individual stationed at a military base or embassy located outside the United States;
  - (ii) Job opportunities exist on the military base or embassy for family members of those stationed there;
  - (iii) The individual lives within a reasonable commuting distance to job opportunities at the military base or embassy; and
  - (iv) The individual is willing to accept the conditions and terms of the available employment provided they are not inconsistent with ORS 657.195.

OAD 471-030-0036(3)(i) (March 21, 2022). 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. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

The record shows that claimant was within the United States for the major portion of week 15-22. Claimant did not leave the United States for Denmark until Friday, April 15, 2022 at around 6:30 p.m. Since he was in the United States from Sunday until Friday evening, claimant spent the major portion of the week within the United States and therefore is not considered unavailable for work for week 15-22 under OAD 471-030-0036(3)(i). Accordingly, claimant was eligible to receive benefits for week 15-22.

In contrast, the record shows that claimant spent the major portion of week 16-22 outside of the United States and therefore was not available for work that week. Claimant spent Sunday, April 17, 2022 through Tuesday, April 19, 2022 in Denmark. On Wednesday, April 20, 2022, claimant left Denmark

bound for Portland with connecting flights in Amsterdam and New York City. Claimant arrived in New York City from Amsterdam on Wednesday, April 20, 2022, in the early afternoon. Accordingly, claimant spent Sunday, Monday, Tuesday, and more than half of Wednesday outside of the United States during week 16-22. Thus, claimant spent the major portion of week 16-22 outside of the United States, District of Columbia or any territory or political division that is directly overseen by the United States federal government. Moreover, because claimant was outside of the United States for a job interview, rather than because of a spouse or domestic partner being stationed abroad, the exceptions listed under OAR 471-030-0036(3)(i)(C)(i)-(iv) for individuals with spouses or domestic partners working at a military base or embassy do not apply to claimant. Finally, as claimant spent the major portion of week 16-22 either in Denmark, the Netherlands, or on an international flight to New York City, he did not spend the major portion of the week in Canada while authorized to work in Canada, or in a country included in the Compact of Free Association with the United States of America.<sup>1</sup> Therefore, claimant was unavailable for work during week 16-22 pursuant to OAR 471-030-0036(3)(i)(C) and was not eligible to receive benefits for that week.

**DECISION:** Order No. 22-UI-194647 is modified, as outlined above.

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

**DATE of Service:** September 7, 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>1</sup> The countries included in the Compact of Free Association with the United States of America are the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. *See* 48 U.S.C. §§ 1901-1973.



# 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.

**Employment Appeals Board - 875 Union Street NE | Salem, OR 97311**  
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