

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0787**

*Reversed*  
*Eligible Weeks 28-21 through 51-21*

**PROCEDURAL HISTORY:** On December 28, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant did not actively seek work from July 11, 2021 through December 25, 2021 (weeks 28-21 through 51-21), and therefore was ineligible to receive unemployment insurance benefits for those weeks (decision # 104837). Claimant filed a timely request for hearing. On February 9, 2022, ALJ Frank conducted a hearing, and on February 14, 2022 issued Order No. 22-UI-186343, affirming decision # 104837 by concluding that claimant was not available for work during weeks 28-21 through 51-21, and therefore ineligible to receive benefits for those weeks. On March 1, 2022, claimant filed an application for review of Order No. 22-UI-186343 with the Employment Appeals Board (EAB). On May 5, 2022, EAB issued EAB Decision 2022-EAB-0283, concluding that claimant was available for work during the weeks at issue and had actively sought work during weeks 28-21 and 29-21, and remanding the matter for further development of the record to determine whether claimant actively sought work during weeks 30-21 through 51-21. On June 23, 2022, ALJ Frank conducted a hearing, and on July 1, 2022 issued Order No. 22-UI-197433, re-affirming decision # 104837 by concluding that claimant did not actively seek work during weeks 28-21 through 51-21, and was therefore ineligible to receive benefits for those weeks. On July 13, 2022, claimant filed a timely application for review of Order No. 22-UI-197433 with EAB.

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

**FINDINGS OF FACT:** (1) On July 17, 2021, claimant filed an initial claim for unemployment insurance benefits. The Department determined that claimant's weekly benefit amount was \$304. Claimant claimed benefits for the weeks from July 11, 2021 through December 25, 2021 (weeks 28-21 through 51-21). These are the weeks at issue. The Department paid claimant benefits for all of the weeks at issue.

(2) Prior to filing her initial claim, claimant worked for approximately 28 to 35 hours per week as an intervention specialist for her two employers, who were related but separate entities. Around July 2021, the two employers reduced claimant's hours. Thereafter, claimant only worked between one and twelve hours per week for the two employers. During the weeks at issue, claimant continued to work part time for the two employers.

(3) Due to circumstances relating to the COVID-19 pandemic, the Department temporarily ceased requiring claimants to actively seek work in order to be eligible for benefits. On or around July 30, 2021, the Department sent mass notices, via either email or U.S. mail, informing claimants that the work search requirements had been reinstated effective the week of July 25, 2021 through July 31, 2021 (week 30-21). Claimant did not receive any such notification.

(4) During each of the weeks including weeks 39-21 through 51-21, and most of the weeks including weeks 28-21 through 38-21, claimant contacted each of her two employers at least once to try to find more or new work with them, including applying for different positions during some weeks. Claimant also completed at least three additional work seeking activities during each of these weeks.

**CONCLUSIONS AND REASONS:** Claimant actively sought work during the weeks at issue.

**Actively seeking work – weeks 28-21 through 38-21.** To be eligible to receive benefits, unemployed individuals must actively seek work during each week claimed as defined by OAR 471-030-0036(5)(a); ORS 657.155(1)(c). However, 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 (4) of Oregon Employment Department Temporary Rule for Unemployment Insurance Flexibility (March 8, 2020), <http://records.sos.state.or.us/ORSOSWebDrawer/Recordpdf/7604239> [hereinafter OED Temporary COVID-19 Rule], provides the following:

The federal Families First Coronavirus Response Act permits states to temporarily modify their unemployment insurances laws regarding work search requirements on an emergency basis to respond to the spread of COVID-19 (Section 4102(b)). Because of the vital importance to public health and safety of mitigating the spread of COVID-19, social distancing measures must be maintained. Accordingly, effective the week ending March 28, 2020, notwithstanding OAR 471-030-0036, and unless otherwise notified in writing by the Employment Department, a person will be considered actively seeking work for purposes of ORS 657.155 if they are willing to look for work when state and local emergency declarations related to the coronavirus expire or otherwise are no longer in effect.

Absent the exceptions created by the OED Temporary COVID-19 Rule, the version of OAR 471-030-0036 effective during weeks 28-21 through 38-21 required individuals to conduct at least five work seeking activities per week, two of which must be a direct contact with an employer who might hire the individual, unless, in relevant part, the individual was temporarily unemployed. OAR 471-030-0036(5)(a). "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." OAR 471-030-0036(5)(a)(B).

The order under review concluded that claimant was not eligible to receive benefits for the weeks at issue because she did not actively seek work during those weeks, noting in particular “that no provision of OAR 471-030-0036 exempts an individual from the eligibility requirements therein absent written notice thereof sent in the mail.” Order No. 22-UI-197433 at 4. The record does not support the conclusion that claimant did not actively seek work during the weeks at issue. Further, in so concluding, the order under review overlooked the OED Temporary COVID-19 Rule that was in effect at the time, and which modified the applicable work search requirements for the earlier portion of the weeks at issue.

Under paragraph (4) of the OED Temporary COVID-19 Rule, which was effective through September 25, 2021, individuals were, unless otherwise notified in writing by the Department, considered to be actively seeking work if they were willing to look for work when state and local emergency declarations related to the coronavirus expire or otherwise are no longer in effect. The record shows that in late July 2021, the Department sent out mass notifications via email and U.S. mail that advised claimants that they would be required to start performing work seeking activities effective week 30-21. However, the Department’s witness testified at hearing that the Department had no record of sending such a notice to claimant specifically. June 23, 2022 Transcript at 8. Further, claimant testified at hearing that she never received such a notice. June 23, 2022 Transcript at 15. As the Department has no record of having notified claimant in writing that she was required to start performing work seeking activities, and as claimant never received such a notice, the Department has not met their burden<sup>1</sup> to show that they ever notified claimant in writing.

Because the preponderance of the evidence shows that the Department did not notify claimant in writing that she was required to start performing work seeking activities, claimant was not required to do so until after the OED Temporary COVID-19 rule was no longer in effect. Further, it is reasonable to conclude from the record that claimant was willing to look for work when state and local emergency declarations expired, given that claimant was actively working and seeking more work during all of the weeks at issue. Therefore, claimant fulfilled the actively seeking work requirement in effect for weeks 28-21 through 38-21.

**Actively seeking work – weeks 39-21 through 51-21.** As of September 26, 2021, the OED Temporary COVID-19 Rule, and its exception to the requirement that claimants seek work, was no longer in effect. Therefore, regardless of whether claimant had written notice of the requirement that she seek work, the actively seeking work requirements of OAR 471-030-0036(4)(a)<sup>2</sup> applied to claimant for weeks 39-21 through 51-21.

The record shows that claimant conducted five work seeking activities, including at least direct two contacts with employers, during each of weeks 39-21 through 51-21. *See* Exhibit 1 at 2–4. The order

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<sup>1</sup> *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976) (where the Department has paid benefits it has the burden to prove benefits should not have been paid).

<sup>2</sup> The September 26, 2021 temporary amendments to OAR 471-030-0036, effective September 26, 2021 through March 22, 2022, did not change the description of what constitutes “work-seeking activities,” as discussed previously in this decision. However, that description, previously found in subparagraph (5)(a), was renumbered and is now located at subparagraph (4)(a).

under review nevertheless concluded that claimant did not actively seek work during these weeks (or any of the other weeks at issue) because claimant had been “repeating the same employer contacts” each week. Order No. 22-UI-197433 at 4. While the order under review is correct that claimant repeated the same employer contacts each week, it was error to conclude that claimant did not actively seek work as a result.

OAR 471-030-0036(4)(a) contains no language which requires individuals to contact new or different employers each week in order to meet the actively seeking work requirement. OAR 471-030-0036(1) permits the Department to impose more stringent requirements on the types of work that an individual is required to seek in order to meet the actively seeking work requirement.<sup>3</sup> Thus, the Department could presumably require an individual to contact new and different employers each week. However, the record contains no indication that the Department ever imposed such a requirement on claimant. The Department’s Claimant Handbook does not impose such a requirement or otherwise place claimant on notice of the expectation.<sup>4</sup> The Department may not retroactively impose eligibility requirements on claimant without having given her notice that she would be subject to such requirements; to do so would violate claimant’s right to due process. Because the record does not show that Department ever notified claimant that she was required to seek work with new and different employers, claimant was not required to do so. As claimant made the requisite direct employer contacts and work seeking activities for each of weeks 39-21 through 51-21, claimant therefore met the actively seeking work requirement for each of those weeks.

For the above reasons, claimant actively sought work for each of the weeks at issue, and therefore is eligible for benefits for each of those weeks.

**DECISION:** Order No. 22-UI-197433 is set aside, as outlined above.

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

**DATE of Service:** October 18, 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>3</sup> For instance, the Department may, depending on individual circumstances, require the individual to seek less desirable but similar work or work of another type which the individual is capable of performing by virtue of experience and training; any work that exists in the labor market for which the individual is suited by virtue of experience and training; or to further expand work-seeking activities. OAR 471-030-0036(1)(a), (b), (c).

<sup>4</sup> *See* [https://www.oregon.gov/employ/unemployment/claimant\\_handbook/pages/default.aspx](https://www.oregon.gov/employ/unemployment/claimant_handbook/pages/default.aspx)

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 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**  
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