

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0606**

*Reversed and Remanded*

**PROCEDURAL HISTORY:** On January 26, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant failed to register for work in accordance with the Department’s rules and was not eligible for benefits from January 8 through 14, 2023 (week 02-23) and until the reason for denial had ended. Claimant filed a timely request for hearing. On April 5, 2023, ALJ Zeitner conducted a hearing, for which the Department submitted an Attestation in lieu of attending the hearing. At the conclusion of the hearing, ALJ Zeitner made on-the-record comments indicating that she was ruling “in [claimant’s] favor,” that the January 26, 2023 administrative decision would be reversed, and that she “would get the written order in the mail.” April 5, 2023 Audio Record at 27:27 to 28:34. Prior to issuing a written order, ALJ Zeitner ceased being an employee of OAH and the matter was reassigned to ALJ Meerdink. On May 19, 2023, ALJ Meerdink conducted a hearing, at which claimant and the Department appeared, and issued Order No. 23-UI-225487, modifying the January 26, 2023 administrative decision by concluding that claimant failed to register for work in accordance with the Department’s rules and was therefore not eligible for benefits from January 8 through 21, 2023 (weeks 02-23 through 03-23).<sup>1</sup> On May 26, 2023, claimant filed an application for review of Order No. 23-UI-225487 with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** EAB considered claimant’s written argument in reaching this decision.

**FINDINGS OF FACT:** (1) In December 2022, claimant was employed as a bartender at a restaurant. That month, claimant’s employer advised him that the restaurant would be temporarily closing for remodeling, and as a result, he and the other employees of the restaurant would be temporarily laid off for approximately three months beginning January 1, 2023.

(2) On December 27, 2022, the employer assisted their employees, including claimant, with filing initial claims for unemployment insurance benefits online from the workplace. Claimant stated in his

<sup>1</sup> Although Order No. 23-UI-225487 stated that it affirmed the January 26, 2023 administrative decision, it modified that decision by changing the effective dates of ineligibility from week 02-23 to weeks 02-23 through 03-23. Order No. 23-UI-225487 at 3.

application that he was temporarily laid off with an expected return to work date of April 1, 2023. Upon filing his claim, the online filing system informed claimant that he was required to schedule and attend a welcome interview and register for work through the iMatchSkills website within 14 days.

(3) On December 28, 2022, the Department mailed claimant a letter stating that he would be denied benefits if he failed to schedule and attend the welcome interview and register for work on iMatchSkills by January 11, 2023. Claimant was aware of this requirement but did not believe that it applied to him because he believed he was unemployed due to a temporary mass layoff. May 19, 2023 Audio Record at 21:08 to 22:18.

(4) On January 26, 2023, claimant registered for work on iMatchSkills and completed the welcome interview.

(5) On April 14, 2023, the restaurant reopened and claimant returned to work for the employer.

**CONCLUSIONS AND REASONS:** Order No. 23-UI-225487 is reversed, and this matter remanded for further proceedings consistent with this order.

ORS 657.155(1)(a) states that an unemployed individual is eligible to receive benefits only if the individual has registered for work and thereafter continued to report at an employment office in accordance with Department rules. ORS 657.159 states that to satisfy the registration requirement of ORS 657.155(1) an individual shall submit such information regarding the individual's job qualifications, training and experience as the Department requests.

OAR 471-030-0035 (January 11, 2018) states in relevant part:

(1) A claimant may fulfill the "registered for work" requirements of ORS 657.155(1)(a) by completion of such processes as directed by the Director in order to create a full registration for work.

(2) "Full registration for work" as used in this rule, means providing information regarding the individual's job qualifications, skills, training and experience as the Director or an authorized representative of the Director deems necessary to carry out job placement services for the individual.

\* \* \*

OAR 471-020-0020 (August 8, 2004) states in relevant part:

(1)(a) Except for individuals identified in OAR 471-020-0021, all unemployment insurance claimants shall submit such information as may be required by the Oregon Employment Department to carry out job placement services for the individual including, but not limited to, the individual's job qualifications, training and experience. Such information shall be entered into the Business & Employment Services online job match system concurrent with, or as soon as possible following, the filing of an initial claim for unemployment insurance benefits. Entry of this information shall constitute enrollment.

\* \* \*

OAR 471-020-0021 (January 8, 2006) states in relevant part:

The following unemployment insurance claimants are not required to submit registration information to the Employment Department for job placement purposes:

\* \* \*

(2) Individuals on a temporary mass layoff from a single employer.

\* \* \*

OAR 471-030-0036 (December 8, 2019) provides in relevant part:

\* \* \*

(5) This section addresses the requirements for actively seeking work, as required under ORS 657.155(1)(c):

(a) Unless the individual is temporarily unemployed, as described in section (b), or a member of a dispatching union, as described in section (c), a federal employee as described in section (d), or otherwise directed by the director or an authorized representative of the Employment Department, they must conduct at least five work-seeking activities per week. Two of the five work-seeking activities must be a direct contact with an employer who might hire the individual.

\* \* \*

(b) For an individual who is temporarily unemployed:

(A) They are considered to be actively seeking work when they remain in contact with their regular employer and are capable of accepting and reporting for any suitable work with that employer;

(B) There is a reasonable expectation that they will be returning to work for their regular employer. The work the individual is returning to must be full time or pay an amount that equals or exceeds their weekly benefit amount;

(C) The department will not consider the individual to be temporarily unemployed if they were separated from their employer for reasons other than a lack of work, the work the individual is returning to is not with their most recent employer, or the length the individual is unemployed is longer than the period described in subsection (D) of this section; and

(D) The department will consider that the period for which an individual is temporarily unemployed:

(i) Begins the last date the individual performed services for the employer. In the case of an individual still working for the employer, it is the last date worked during the week in which the individual had earnings less than their weekly benefit amount; and

(ii) Cannot be greater than four weeks between the week the individual became temporarily unemployed and the week the individual returns to work as described in subsection (B) of this section.

\* \* \*

Because the Department did not pay claimant benefits for the weeks at issue, claimant has the burden to show that he was eligible for benefits for those weeks. *See 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; 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).

The order under review concluded that the Department's rules required claimant to register for work by January 11, 2023, and he therefore was ineligible for benefits by failing to do so. Order No. 23-UI-225230 at 3. Further development of the record is needed to determine the applicability of the work registration requirement to claimant's situation.

The record suggests that claimant may have been unemployed as a result of a "temporary mass layoff by a single employer." The restaurant where claimant worked as a bartender was closed from January 1 through April 14, 2023 as it underwent planned renovations initially expected to last three months, and the employer assisted their employees in filing initial claims for unemployment insurance benefits in advance of the layoff. These facts suggest that claimant was laid off, as he stopped working at the direction of the employer due to a lack of work caused by the restaurant's closure; that the layoff was temporary, since he was provided a definite date on which he was expected to return to work at the time of the layoff; and, that it was a mass layoff by a single employer because the layoff applied to most or all employees working at the employer's restaurant. Accordingly, claimant may have been exempted from the work registration requirement imposed by OAR 471-020-0020 because he was an individual "on a temporary mass layoff from a single employer" as contemplated by OAR 471-020-0021(2).

The order under review concluded that the exemption under OAR 471-020-0021(2) was inapplicable to claimant because, at the time claimant was laid off, he was not expected to return to work within four weeks. Order No. 23-UI-225487 at 3. The order reasoned that, "The Department defines temporarily unemployed in OAR 471-030-0036(5)(b)(D)(ii) as no more than four weeks between the week a claimant begins the period of unemployment and the week the claimant returns to work." Order No. 23-UI-225487 at 3. The Department's representative offered testimony that claimant knew at the time that he filed his initial application for benefits that his return to work date was "beyond a four week period," suggesting that the Department likewise believed that OAR 471-020-0021(2) did not exempt claimant

from the registration requirement for the same reason as the order under review. May 19, 2023 Audio Record at 23:00 to 23:57. The Department’s interpretation of its rule receives deference unless it is inconsistent with the rule’s text, context, or any other source of law. *See accord Ring v. Employment Dep’t.*, 205 Or App 532, 134 P3d 1096 (2006), *citing Don’t Waste Oregon Com. v. Energy Facility Siting*, 320 Or 132, 142, 881 P2d 119 (1994); *Johnson v. Employment Dept.*, 189 Or App 243, 74 P3d 1159 (*Johnson II*), *adh’d to as modified on recons.*, 191 Or App 222, 81 P3d 730 (2003) (*Johnson III*).

If the Department interprets OAR 471-020-0021(2) to have a four-week limitation for a mass layoff to be considered a “temporary mass layoff” within the meaning of the rule, this interpretation may be inconsistent with the rule’s text, context, and other sources of law. The term “temporarily unemployed,” defined in OAR 471-030-0036(5)(b)(D)(ii) as having a four-week limitation, is not found in OAR 471-020-0021. As OAR 471-030-0036 implements the statutory requirement that a claimant actively seek work during each week claimed, which is not at issue here, it is unclear why the definition of a term used in that rule would be applicable to an entirely unrelated rule, OAR 471-020-0021, in which that term does not appear. OAR 471-020-0021 does not explicitly limit its applicability to temporary mass layoffs expected to last four weeks or fewer, as OAR 471-030-0036 does for the actively seeking work requirement in situations where a claimant is a temporarily unemployed individual. The record on remand should clarify whether the Department interprets the term “temporary mass layoff” to be subject to a four-week limitation for purposes of exemption from the registering for work requirement and, if so, what source of law the Department relies upon in making that interpretation. This interpretation, and a determination of whether claimant was unemployed as a result of a “temporary mass layoff,” are necessary to determine whether claimant was exempted under OAR 471-020-0021 from being required to register for work.

Because further development of the record is necessary to determine whether claimant is subject to a denial of benefits for failing to register for work, Order No. 23-UI-225487 is set aside, and the matter remanded.

**DECISION:** Order No. 23-UI-225487 is set aside, and the matter remanded for further proceedings consistent with this order.

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

**DATE of Service:** June 30, 2023

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 23-UI-225487 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.