

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-1269**

*Affirmed*  
*Ineligible Weeks 27-23 and 28-23*

**PROCEDURAL HISTORY:** On September 15, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant did not actively seek work from July 2 through 15, 2023 (weeks 27-23 through 28-23) and was ineligible for benefits for those weeks (decision # 132143). Claimant filed a timely request for hearing. On October 25, 2023, ALJ Nyberg conducted a hearing, and on November 2, 2023, issued Order No. 23-UI-240156, affirming decision # 132143. On November 16, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

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

**FINDINGS OF FACT:** (1) On December 31, 2022, claimant filed an initial application for unemployment insurance benefits. The Department determined it to be a monetarily valid claim for regular unemployment insurance (regular UI) benefits with a weekly benefit amount (WBA) of \$783.

(2) Claimant resumed full-time work after filing his initial claim. During the week of May 28, 2023, through June 3, 2023 (week 22-23), claimant learned that following that week, only intermittent work was available from his employer due to a temporary lack of work. The employer expected full-time work to eventually resume, but was unsure of when that would occur. Claimant continued to work for the employer on an intermittent basis until full-time work resumed during the week of July 16 through 22, 2023 (week 29-23).

(3) Claimant filed weekly claims for the weeks from June 4 through July 15, 2023 (weeks 23-23 through 28-23). Claimant worked part-time for his employer during weeks 23-23, 27-23 and 28-23, earning less than his WBA, and was paid partial benefits for those weeks. Claimant did not perform work during weeks 24-23 through 26-23 and was paid his full WBA for those weeks.

(4) When filing weekly claims for the weeks of June 4 through July 15, 2023 (weeks 23-23 through 28-23), claimant reported that he was temporarily unemployed. He did not contact employers or conduct work seeking activities during these weeks, except for maintaining contact with his regular employer.

**CONCLUSIONS AND REASONS:** Claimant did not actively seek work from July 2 through 15, 2023 (weeks 27-23 through 28-23).

To be eligible to receive benefits, unemployed individuals must actively seek work during each week claimed. ORS 657.155(1)(c); OAR 471-030-0036(5) (December 8, 2019). For purposes of ORS 657.155(1)(c), an individual is actively seeking work when doing what an ordinary and reasonable person would do to return to work at the earliest opportunity. OAR 471-030-0036(5)(a) (December 8, 2019). Unless an exception such as for temporary unemployment applies, individuals are “required to conduct at least five work seeking activities per week, with at least two of those being direct contact with an employer who might hire the individual.” 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).

For individuals who are temporarily unemployed, OAR 471-030-0036(5)(b) defines “actively seeking work” as follows:

- (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.

The record shows that from July 2 through 15, 2023 (weeks 27-23 through 28-23), the weeks at issue, claimant did not conduct five work seeking activities per week, including two direct contacts with employers, because he believed he was exempted from the requirement to do so by being temporarily unemployed. The Department concluded that claimant *was* temporarily unemployed, as defined in OAR

471-030-0036(5)(b), during the four preceding weeks of June 4 through July 1, 2023 (weeks 23-23 through 26-23), which are not directly at issue in this appeal. For the reasons detailed herein, claimant was not temporarily unemployed, as defined in OAR 471-030-0036(5)(b), during weeks 27-23 and 28-23 because the weeks occurred more than four weeks after he became temporarily unemployed and before the week he returned to full-time work for his employer.

Prior to week 27-23, claimant last worked part-time for the employer and earned less than his WBA during the week of July 4 through 10, 2023 (week 23-23). Pursuant to OAR 471-030-0036(5)(b)(D)(i), week 23-23 therefore began a period of temporary unemployment. Claimant did not perform any work during the subsequent three weeks (weeks 24-23 through 26-23). Claimant reported being temporarily unemployed in his four weekly claims for weeks 23-23 through 26-23, and the Department exempted him from the standard work-seeking requirements for those weeks. OAR 471-030-0036(5)(b)(D)(ii) provides that a period of temporary employment “[c]annot be greater than four weeks between the week the individual became temporarily unemployed and the week the individual returns to [full-time] work.” Claimant did not return to full-time work until the week of July 16 through 22, 2023 (week 29-23). Therefore, a period of temporary unemployment existed during weeks 23-23 through 26-23, but did not extend to weeks 27-23 and 28-23 due to the four-week limit.<sup>1</sup> Accordingly, claimant was required to conduct five work seeking activities per week, including two direct contacts with employers, during weeks 27-23 and 28-23.

Claimant mistakenly believed the temporary unemployment exception to the work seeking requirements also applied to his claims for weeks 27-23 and 28-23. He therefore did not conduct work seeking activities other than maintaining contact with his regular employer those weeks. Because the temporary unemployment exception did not apply, and claimant did not conduct the required work seeking activities during those weeks, he was not actively seeking work in accordance with the Department’s rules. Accordingly, claimant is ineligible for benefits for the weeks of July 2 through 15, 2023 (weeks 27-23 and 28-23).

**DECISION:** Order No. 23-UI-240156 is affirmed.

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

**DATE of Service:** December 27, 2023

**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.

---

<sup>1</sup> Because weeks 27-23 and 28-23 fall outside of the four-week limit on temporary unemployment, this decision does not address whether the remaining elements of OAR 471-030-0036(5)(b) were satisfied during those weeks, including whether there was a reasonable expectation that claimant would return to full-time work within a four-week period.

**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.