

**EMPLOYMENT APPEALS BOARD DECISION**  
**2024-EAB-0198**

*Reversed*  
*Eligible Weeks 40-23 through 47-23*

**PROCEDURAL HISTORY:** On December 6, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant failed to actively seek work for the weeks of October 1, 2023, through November 25, 2023 (weeks 40-23 through 47-23) and therefore was ineligible to receive unemployment insurance benefits for those weeks (decision # 73043). Claimant filed a timely request for hearing. On January 18, 2024, and continued on February 1, 2024, ALJ Frank conducted a hearing. The Department failed to appear at the continued hearing on February 1, 2024. On February 2, 2024, ALJ Frank issued Order No. 24-UI-247222, affirming decision # 73043. On February 22, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant's argument to the extent it was based on the record.

**FINDINGS OF FACT:** (1) On September 9, 2023, claimant filed an initial claim for unemployment insurance benefits. Claimant subsequently claimed benefits for the weeks of October 1, 2023, through November 25, 2023 (weeks 40-23 through 47-23). These are the weeks at issue. The Department paid claimant benefits for the weeks at issue.

(2) Prior to the weeks at issue, claimant had been working full time for his regular employer Tiny Smart House. Claimant last worked full time for his regular employer on August 28, 2023. At that time, claimant expected to return to full-time work for his regular employer by September 24, 2023. However, although claimant returned to part-time work for his regular employer around early October 2023, he never returned to full-time work for his regular employer during the weeks at issue.

(3) When he claimed benefits for each of the weeks at issue, claimant marked the box indicating that he was temporarily unemployed and, as a result, did not provide work searches to the Department for any

of those weeks. Claimant did so based on a misunderstanding of the process and whether he qualified as temporarily unemployed. Nevertheless, claimant contacted at least two employers who might hire him, and conducted at least three additional work seeking activities, during each of the weeks at issue. *See* Exhibit 1 at 2–3. For each of the weeks at issue, claimant listed his regular employer as one of the employer contacts. Claimant also listed another employer, a property management company, as the other employer he contacted for three of the weeks at issue. For the remaining five weeks at issue, claimant listed one unique employer each week in addition to his regular employer.

(4) On November 30, 2023, the Department mailed a letter to claimant which requested his work searches for each of the weeks at issue. On December 16, 2023, claimant responded to the letter and included his work searches for each of the weeks at issue. However, the Department did not initially receive claimant’s response and, as a result, concluded that claimant had not actively sought work during the weeks at issue.

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

To be eligible to receive benefits, unemployed individuals must actively seek work during each week claimed. ORS 657.155(1)(c). Except in cases where an individual is temporarily unemployed, or with other exceptions that do not apply here, to be actively seeking work as required under ORS 657.155(1)(c), an individual “must conduct at least five work-seeking activities per week,” with two of the five work-seeking activities being a direct contact with an employer who might hire the individual. OAR 471-030-0036(5)(a) (March 25, 2022). “Direct contact” means “making contact with an employer in person, by phone, mail, or electronically 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.

OAR 471-030-0036(5)(f) states, “In determining whether to modify the requirements in this section for an individual the Employment Department may consider among other factors, length of unemployment, economic conditions in the individual's labor market and prospective job openings, weather conditions affecting occupations or industries, seasonal aspects of the individual's regular occupation, expected date of return to work in regular occupation, seniority status of individual, registration with a union hiring hall and normal practices for obtaining the type of work which the individual is seeking pursuant to section (1) of this rule. The department shall provide a written copy of the work search requirements to the individual if the individual's work search requirements are modified.”

The Department determined that claimant had not actively sought work during the weeks at issue because he did not provide work searches for those weeks<sup>1</sup> and because it did not receive his subsequent response to their letter requesting his work searches. Claimant submitted a copy of that response into the record, which was admitted as Exhibit 1. That response shows that claimant performed five work seeking activities for each of the weeks at issue, including, for each week, two direct contacts with employers. Nevertheless, the order under review concluded that claimant did *not* meet the actively seeking work requirements for the weeks at issue because claimant's work searches “consist[ed] primarily of contacts made repeatedly, week after week, with his former employer and one other.” Order No. 24-UI-247222 at 4. This conclusion misconstrues the plain language of OAR 471-030-0036(5) and reads into that rule a requirement which does not exist.

In particular, OAR 471-030-0036(5)(a) requires that two of the five work-seeking activities be “a direct contact with an employer who might hire the individual.” For each of the weeks at issue, claimant contacted two employers, including his regular employer, who might have hired him. The rule does not require that each employer contact be unique, nor does it forbid claimants from repeatedly listing employers they have already contacted in previous weeks. Therefore, claimant's repeated listing of his regular employer, each week, is permitted under the rule and counts towards the actively seeking work requirement. Claimant's repeated listing of the property management company similarly counts towards that requirement. Claimant contacted that potential employer on October 8, October 31, and November 12, 2023. Exhibit 1 at 2. At hearing, claimant testified that potential employer had instructed him to check back in with them in a couple of weeks. February 1, 2024, Audio Record at 9:29-9:51.

Under OAR 471-030-0036(5)(f), the Department retains the authority to modify the work-seeking requirements for an individual. Thus, the Department could, presumably, have required claimant to list contacts with new, different employers during each week he claimed. In order to exercise that authority, however, the Department is required to “provide a written copy of the work search requirements to the

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<sup>1</sup> Had claimant been considered temporarily unemployed for the weeks at issue, claimant would not have been required to provide work searches for those weeks. However, the record clearly shows that claimant was not considered temporarily unemployed, per OAR 471-030-0036(5)(b), during the weeks at issue. As the outcome of this matter does not turn on whether claimant was temporarily unemployed during the weeks at issue, that point is not addressed further in this decision.

individual if the individual's work search requirements are modified." The record contains no indication that the Department modified claimant's work search requirements for the weeks at issue, or provided a written copy of such modified requirements to claimant. Further, as the Department paid claimant benefits for the weeks at issue, it bears the burden to show that those benefits should not have been paid.<sup>2</sup> Because the Department provided no evidence that it modified claimant's work search requirements for the weeks at issue, or notified him of the same, it has failed to meet its burden.

For the above reasons, claimant actively sought work during the weeks at issue, and is not ineligible to receive unemployment insurance benefits for those weeks.

**DECISION:** Order No. 24-UI-247222 is set aside, as outlined above.

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

**DATE of Service:** March 29, 2024

**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.

**NOTE:** This decision reverses an order that denied benefits. Please note that payment of benefits, if any are owed, may take approximately a week for the Department to complete.

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<sup>2</sup> *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).



# 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 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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