

**EMPLOYMENT APPEALS BOARD DECISION**  
**2024-EAB-0471**

*Reversed*  
*Eligible Week 08-24*

**PROCEDURAL HISTORY:** On March 21, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work during the week of February 18 through 24, 2024 (week 08-24) and was ineligible for benefits for that week and until the reason for the denial ended (decision # L0003223728). Claimant filed a timely request for hearing. On May 16, 2024, ALJ Nyberg conducted a hearing at which the Department failed to appear, and on May 24, 2024, issued Order No. 24-UI-254989, affirming decision # L0003223728. On May 29, 2024, 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) Claimant filed an initial claim for benefits on December 14, 2023, which was determined to be monetarily valid.<sup>1</sup> Claimant filed weekly claims for benefits including for the week of February 18 through 24, 2024 (week 08-24). This is the week at issue. The Department did not pay claimant benefits for the week at issue.

(2) On Friday, February 23, 2024, at approximately 5:00 a.m., claimant left Oregon on a flight to Mexico. Claimant returned to Oregon on March 2, 2024. Claimant took this trip as a vacation and did not intend to seek work in Mexico. Claimant had been present in in the Redmond area during the portion of the week at issue preceding her departure. Claimant did not miss any opportunity to work or referral to work due to her absence from her labor market on February 23 and 24, 2024.

**CONCLUSIONS AND REASONS:** Claimant was available for work during week 08-24.

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<sup>1</sup> EAB has taken notice of this fact which is contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). Any party that objects to our taking notice of this information must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the noticed fact will remain in the record.

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). For an individual to be considered “available for work” for purposes of ORS 657.155(1)(c), they must be:

(a) Willing to work full time, part time, and accept temporary work opportunities, during all of the usual hours and days of the week customary for the work being sought, unless such part time or temporary opportunities would substantially interfere with return to the individual’s regular employment; and

(b) Capable of accepting and reporting for any suitable work opportunities within the labor market in which work is being sought, including temporary and part time opportunities; and

(c) Not imposing conditions which substantially reduce the individual’s opportunities to return to work at the earliest possible time; and

(d) Physically present in the normal labor market area as defined by [OAR 471-030-0036(6) (March 25, 2022)], every day of the week unless:

(A) The individual is actively seeking work outside his or her normal labor market area; or

(B) The individual is infrequently absent from the normal labor market area for reasons unrelated to work search, for less than half of the week, and no opportunity to work or referral to work was missed by such absence.

\* \* \*

(i) An individual is not available for work in any week claimed under ORS 657.155 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[.]\* \* \*

OAR 471-030-0036(3).

Claimant was physically present in her labor market<sup>2</sup> during the week at issue, except from 5:00 a.m. on February 23, 2024, until the week ended at 11:59 p.m. on February 24, 2024, and otherwise met the availability requirements for the entirety of the week. The order under review concluded that claimant’s

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<sup>2</sup> As the Department did not participate in the hearing, it is reasonable to assume from the record that claimant’s labor market was the area in and around Redmond, Oregon.

absence from the labor market during her trip to Mexico rendered her unavailable for work during the week at issue. Order No. 24-UI-254989 at 3. The record does not support this conclusion.

The Department did not participate in the hearing, and decision # L0003223728 cited only claimant's absence from the labor market during her trip to Mexico as the basis for the conclusion that claimant was not available for work during the week at issue. Decision # L0003223728 at 1. The record does not suggest that claimant failed to meet any other availability requirements set forth in OAR 471-030-0036(3) during the week at issue. The question of claimant's availability therefore turns on whether claimant's trip to Mexico during a portion of the week at issue was an infrequent absence from her labor market "for less than half of the week, and no opportunity to work or referral to work was missed by such absence." OAR 471-030-0036(3)(d)(B).

Claimant's itinerary for the trip shows that it was scheduled to begin at 5:00 a.m. on February 23, 2024. Exhibit 1 at 1. The record does not suggest that the trip began earlier than scheduled. The portion of the trip that took place during the week at issue therefore amounted to less than two full days. Accordingly, claimant was absent from her labor market for less than half of the week. Claimant testified that prior to leaving on the trip, she had secured employment to begin on March 4, 2024. Audio Record at 10:54. Her testimony further suggested that she was still "carrying out work searches" during the week at issue, and that if she were offered an interview for interim work that she would have attended such an interview. *See* Audio Record at 11:05. The record does not suggest that claimant was offered work or an interview on February 23 or 24, 2024, or that claimant missed such an offer during those days by being absent from the labor market. Therefore, claimant's brief absence from her labor market did not render her unavailable under the rule.

For these reasons, claimant was available for work during week 08-24 and is eligible for benefits for that week.

**DECISION:** Order No. 24-UI-254989 is set aside, as outlined above.

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

**DATE of Service:** July 8, 2024

**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.

**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.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveymzmo.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**  
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[www.Oregon.gov/Employ/eab](http://www.Oregon.gov/Employ/eab)

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