

**EMPLOYMENT APPEALS BOARD DECISION**  
**2024-EAB-0530**

*Affirmed*  
*Ineligible Weeks 27-20 and 28-20*

**PROCEDURAL HISTORY:** On December 30, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work for the weeks of June 28, 2020<sup>1</sup> through July 11, 2020 (weeks 27-20 through 28-20) and therefore was ineligible to receive unemployment insurance benefits for those weeks and until the reason for the denial ended (decision # 104021). On January 19, 2021, decision # 104021 became final without claimant having filed a request for hearing. On March 8, 2022, claimant filed a late request for hearing.

On November 2, 2023, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for November 16, 2023. On November 16, 2023, claimant failed to appear at the hearing, and ALJ Frank issued Order No. 23-UI-241353, dismissing claimant's request for hearing due to his failure to appear and leaving decision # 104021 undisturbed. On December 6, 2023, Order No. 23-UI-241353 became final without claimant having filed a request to reopen the November 16, 2023, hearing. On December 19, 2023, claimant filed a late request to reopen the hearing.

On March 20, 2024, ALJ Enyinnaya conducted a hearing at which the Department failed to appear, and on March 28, 2024, issued Order No. 24-UI-251070, allowing claimant's late request to reopen the November 16, 2023, hearing, canceling Order No. 23-UI-241353, re-dismissing claimant's request for hearing on decision # 104021 as late without a showing of good cause, and leaving that decision undisturbed. On April 8, 2024, claimant filed an application for review with the Employment Appeals Board (EAB). On May 23, 2024, EAB issued EAB Decision 2024-EAB-0349, modifying Order No. 24-UI-251070 by allowing claimant's late request to reopen and late request for hearing and remanding the matter for a hearing on the merits of decision # 104021.

<sup>1</sup> Decision # 104021 stated that claimant was ineligible for benefits effective June 27, 2020. Exhibit 1 at 3. However, as benefit weeks begin on Sundays and June 27, 2020, was a Saturday, the date is presumed to be a scrivener's error, and June 28, 2020, is likewise presumed to be the intended start date of claimant's ineligibility.

On June 18, 2024, ALJ Enyinnaya conducted a hearing at which the Department failed to appear, and on June 24, 2024, issued Order No. 24-UI-257278, affirming decision # 104021. On July 8, 2024, claimant filed an application for review with EAB.

**FINDINGS OF FACT:** (1) Prior to April 2020, claimant worked as part of a grounds crew for an airport. Following the onset of the COVID-19 pandemic, demand for air travel decreased, and claimant's employer had few hours available to offer employees. Claimant's employer offered their employees an opportunity to take unpaid leave, during which the employer advised they could claim unemployment insurance benefits.

(2) In April 2020, claimant went on a voluntary unpaid leave of absence from his job at the airport. Claimant went on the leave of absence because his employer had few hours available to offer him. Claimant also went on the leave of absence because he had immunocompromised family members, thought working at the airport during the pandemic presented safety issues, and "wanted to find a new line of work with [his] time on unpaid leave." Audio Record at 15:44.

(3) On April 28, 2020, claimant filed his initial claim for unemployment insurance benefits. The Department determined claimant had a monetarily valid claim for regular unemployment insurance (regular UI) benefits. Thereafter, claimant claimed and was paid for weeks of benefits through May and June 2020.<sup>2</sup>

(4) During May and June 2020, claimant "was searching around every week trying to find a different type of job" and "was looking for anything available." Audio Record at 16:21 to 16:52.

(5) Claimant saw a job listing to work as a videographer for a real estate company called the Beckham Group. In May 2020, claimant did some test shoots for the Beckham Group to see if he was a good fit. The Beckham Group wanted to work with claimant and claimant decided to start his own videography business with the Beckham Group as his sole client, rather than become an employee of the Beckham Group.

(6) On June 30, 2020, claimant registered his videography business with the Oregon Secretary of State and began providing services to the Beckham Group. Once claimant started his business and began performing services for the Beckham Group, claimant did not seek any other work and was not available to perform other work because he was focused on his self-employment.

(7) Claimant claimed and was paid benefits for the weeks of June 28, 2020, through July 11, 2020 (weeks 27-20 through 28-20).<sup>3</sup> These are the weeks at issue.

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<sup>2</sup> EAB has taken notice of the facts contained in this paragraph, which are 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.

<sup>3</sup> EAB has taken notice of these facts, which are contained in Employment Department records. OAR 471-041-0090(1). 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.

(8) Claimant's employer requested claimant return to work on the grounds crew on July 11, 2020. Claimant resigned from his grounds crew job on July 11, 2020, because he "had started [his] business and . . . was ready to move on." Audio Record at 18:06.

**CONCLUSIONS AND REASONS:** Claimant was not available for work during the weeks at issue and therefore was ineligible to receive benefits for those weeks.

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[.]

\* \* \*

OAR 471-030-0036(3) (December 8, 2019).

As an initial matter, at hearing, claimant testified that he stopped claiming benefits "as soon as [he] registered [his] business" with the Oregon Secretary of State and that he registered his business on June 30, 2020. Audio Record at 9:43, 11:24. However, the weeks at issue are June 28, 2020, through July 11, 2020 (weeks 27-20 through 28-20) and Department records show that claimant claimed and was paid benefits for each of those weeks. Claimant otherwise testified that he ended his unpaid leave and resigned from his airport grounds crew job on July 11, 2020, because the employer had asked claimant to return to work but claimant "had started [his] business and [he] was ready to move on." Audio Record at 18:05. Given claimant's testimony regarding the timing of ending his unpaid leave and the Department's records, it is reasonable to conclude that claimant was mistaken in his testimony that he stopped claiming benefits at the time he registered his business, and instead stopped claiming when he resigned from his airport grounds crew job on July 11, 2020, and the facts have been found accordingly.

Claimant testified that once he was self-employed and providing services to the Beckham Group, he did not seek other work. Audio Record at 21:28 to 21:55. Claimant stated that at that point, he was not available to perform other jobs because he "wasn't trying to because [he] had just started a business so [he] was just focusing on that job at hand because it kept [him] pretty busy." Audio Record at 22:38 to 22:58. Claimant also testified that he did not consider seeking any full time, part time, or temporary work while he was performing his self-employment services because he wanted his business to be his sole work. Audio Record at 25:39 to 26:23.

This evidence is sufficient to conclude that once claimant was self-employed and providing services to the Beckham Group, he was not available for work. More likely than not, the date claimant became self-employed and providing services to the Beckham Group was June 30, 2020, because that was the date on which claimant registered his videography business with the Oregon Secretary of State. Accordingly, on that date, which occurred during week 27-20, claimant became unwilling to accept suitable work opportunities because his business was his sole focus. Claimant remained unwilling to accept suitable work opportunities during week 28-20 because his business continued to be his sole focus during that week. Claimant therefore was not available for work during the weeks at issue, weeks 27-20 and 28-20.

Note that the weeks at issue occurred during a timeframe when the Department applied temporary rules applicable to the unique situations arising due to COVID-19 and the actions to slow its spread. Specifically, under temporary administrative rule OAR 471-030-0070(5) (effective March 8, 2020, through September 12, 2020), a person will not be deemed unavailable for work because:

- (a) They are staying in their home, or are quarantined, due to risk of exposure to, or spread of, the novel coronavirus at the advice of a health care provider or by advice issued by public health officials or by directive of a government official, even if their employer had work for them they could otherwise have performed;
- (b) They are home solely because they lack childcare for a child or children due to school or daycare closures or curtailments;
- (c) They are home to care for a family member due to the effects of novel coronavirus; or
- (d) They normally work less than full-time and are only available for less than full-time work.

Claimant went on voluntary unpaid leave in April 2020 in part because he had immunocompromised family members and thought working at the airport during the pandemic presented safety issues. However, the record does not show that any of the criteria set forth under subparts (a) through (d) of the above temporary rule apply to claimant's circumstances during the weeks at issue. Thus, the ordinary "available for work" criteria set forth under OAR 471-030-0036(3) are applicable. Under those criteria, claimant was not available for work during the weeks at issue because he was self-employed and providing services to the Beckham Group and therefore unwilling to accept suitable work opportunities during those weeks.

Accordingly, claimant was not available for work during the weeks at issue, the weeks of June 28, 2020, through July 11, 2020 (weeks 27-20 through 28-20). Claimant is not eligible to receive benefits for those weeks.

**DECISION:** Order No. 24-UI-257278 is affirmed.

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

**DATE of Service:** July 31, 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.

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# 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)

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