

State of Oregon  
**Employment Appeals Board**  
875 Union St. N.E.  
Salem, OR 97311

*Affirmed*  
*Ineligible Week 17-24*

**PROCEDURAL HISTORY:** On May 2, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant did not actively seek work from April 21 through 27, 2024 (week 17-24) and was ineligible for benefits for that week (decision # L0003993544). Claimant filed a timely request for hearing. On June 27, 2024, ALJ Contreras conducted a hearing, and on July 3, 2024, issued Order No. 24-UI-258032, affirming decision # L0003993544. On July 18, 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 argument to the extent it was based on the record.

Though the record does not suggest that claimant was overpaid benefits as a result of *this* administrative decision, claimant may have been overpaid benefits as a result of other recent administrative decisions. To the extent claimant's argument expressed a desire to have recovery of such overpayments waived, this cannot be accomplished by means of this appeal. However, claimant may wish to contact the Department for information on how to seek such a waiver, appeal other administrative decisions, or both.

**FINDINGS OF FACT:** (1) Lucky Transportation (the employer) employed claimant as a livery and bus driver for more than 20 years, including from January 2024 through April 2024.

(2) In January 2024, the employer temporarily reduced claimant's hours due to a lack of work. Claimant and the employer expected business to improve seasonally and claimant's hours to increase through the spring and summer.

(3) On January 25, 2024, claimant filed an initial claim for unemployment insurance benefits that was determined to be monetarily valid with a weekly benefit amount (WBA) of \$360. Claimant thereafter

filed weekly claims for benefits for the weeks from March 3 through April 27, 2024 (weeks 10-24 through 17-24). Claimant was paid benefits for weeks 11-24 through 15-24, but was not paid benefits for weeks 10-24, 16-24, or 17-24. Week 17-24 is the week at issue in this matter.

(4) Claimant continued to work a reduced number of hours for the employer during weeks 10-24 through 17-24, and expected during this period to eventually return to a full-time schedule or a schedule that provided sufficient hours to earn more than his WBA of \$360. Claimant reported earnings on his weekly claims as follows:<sup>1</sup>

<b>Week</b>	<b>Earnings</b>
10-24	\$407.47
11-24	\$341.20
12-24	\$316.19
13-24	\$0.00
14-24	\$327.45
15-24	\$191.37
16-24	\$95.91
17-24	\$173.44

(5) During weeks 10-24 through 17-24, claimant maintained regular contact with the employer, seeking additional opportunities to work. However, claimant did not seek work with any other employer during this period out of loyalty to the employer, and because he felt that working elsewhere would likely be on less favorable terms than those he had with the employer, given his seniority in that position.

**CONCLUSIONS AND REASONS:** Claimant was not actively seeking work during week 17-24.

To be eligible to receive benefits, unemployed individuals must actively seek work during each week claimed. ORS 657.155(1)(c). For individuals who are temporarily unemployed, OAR 471-030-0036(5)(b) (March 25, 2022) 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

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<sup>1</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 facts will remain in the record.

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.

If a claimant does not meet *all* the requirements in OAR 471-030-0036(5)(b) to be considered “temporarily unemployed,” or meet another exception, 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). “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).

Claimant’s testimony suggested that he remained in contact with his current employer during week 17-24, but did not otherwise complete a total of five work-seeking activities that included two employer contacts. *See* Audio Record at 9:57 to 10:19. Therefore, to be considered actively seeking work under the rules, claimant must have shown that he met an exception to the standard work-seeking requirement. The only potentially applicable exception here is the one set forth in OAR 471-030-0036(5)(b) for individuals who are “temporarily unemployed.” While claimant met many of the requirements necessary to qualify for that exception, he did not meet *all* of them, specifically the time limit set forth in OAR 471-030-0036(5)(b)(D)(ii).

The period of temporary unemployment relevant to the week at issue began the week of March 10 through 16, 2024 (week 11-24). The record shows that in the week prior, week 10-24, claimant had earned \$407.47, which exceeded his WBA of \$360. Claimant was thus not “unemployed” in week 10-24.<sup>2</sup> In week 11-24, claimant worked less than full-time and earned \$341.20, which was less than his WBA of \$360. Therefore, the relevant period of temporary unemployment began during week 11-24. As claimant’s earnings did not equal or exceed \$360 that week, or in weeks 12-24, 13-24, or 14-24, claimant was “temporarily unemployed” for purposes of work-seeking requirements during those four weeks.

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<sup>2</sup> Per ORS 657.100(1), an individual is deemed “unemployed” in any week during which the individual performs no services and with respect to which no remuneration for services performed is paid or payable to the individual, or in any week of less than full-time work if the remuneration paid or payable to the individual for services performed during the week is less than the individual’s weekly benefit amount.

Claimant remained “unemployed” during weeks 15-24 through 17-24 because his earnings likewise did not equal or exceed \$360, and therefore claimant did not “return[] to work” during that period as that term is explained in OAR 471-030-0036(5)(b)(B). To be clear, claimant worked less than full time during weeks 15-24 through 17-24. However, he did not meet the definition of “temporarily employed” under the rule for those weeks because the period of temporary unemployment had exceeded four weeks without claimant having returned to full-time work or work that paid \$360 or more in a week. Therefore, claimant was required to meet the standard work-seeking requirements during week 17-24.

Claimant did not assert at hearing that he performed any work-seeking activities other than waiting for the employer’s app to alert him that he had been offered work, and testified that he assured the employer since the start of his employment that he would “not look for other work.” Audio Record at 10:20 to 11:43. While claimant’s reasons for not wanting to work for employers other than his employer of more than 20 years, such as his promise to the employer of loyalty and the benefits of seniority, are understandable, the relevant statute and rules required him to actively seek work as a condition of eligibility for benefits during the week at issue. Claimant failed to show that he completed the requisite number of work-seeking activities during that week.

For the reasons discussed above, claimant was not actively seeking work in accordance with the Department’s rules during week 17-24 and is therefore ineligible for benefits for that week.

**DECISION:** Order No. 24-UI-258032 is affirmed.

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

**DATE of Service:** August 2, 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.

**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

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## 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**  
 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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