

**EMPLOYMENT APPEALS BOARD DECISION**  
**2024-EAB-0603**

*Reversed*  
*Eligible Weeks 11-24 through 22-24*

**PROCEDURAL HISTORY:** On May 10, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not able to work during from March 10 through May 4, 2024 (weeks 11-24 through 18-24) and was ineligible for benefits for those weeks and until the reason for the denial ended (decision # L0003954295).<sup>1</sup> Claimant filed a timely request for hearing. On June 3, 2024, ALJ Chiller conducted a hearing at which the Department failed to appear, and on June 11, 2024, issued Order No. 24-UI-256215, modifying decision # L0003954295 by concluding that claimant was not able to work from March 10 through June 1, 2024 (weeks 11-24 through 22-24) and was ineligible for benefits for those weeks.<sup>2</sup> On June 25, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) On October 6, 2023, claimant sought treatment for ongoing back pain. Restrictions were placed on her work activities including standing, bending, and stooping.

(2) After claimant informed her then-employer of her limitations and asked that that they be accommodated, she separated from employment on October 9, 2023, because “[t]hey didn’t want to accommodate [her].” Transcript at 8. Claimant believed that this job, involving assembly line work, could have accommodated her limitations by allowing her to sit for five-minute periods as needed.

(3) On November 26, 2023, claimant filed an initial claim for benefits that the Department determined to be monetarily valid. Claimant thereafter claimed benefits for the weeks from March 10 through June 1,

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<sup>1</sup> Decision # L0003954295 stated that the period of ineligibility for benefits would end on November 23, 2024. However, ability to work is determined for each benefit week claimed, and therefore the ineligibility period here is considered indefinite.

<sup>2</sup> On June 12, 2024, and June 13, 2024, the Department issued decisions # L0004488982 and L0004558514, amending the period of ineligibility to March 10 through June 8, 2024 (weeks 11-24 through 23-24), and March 10 through June 1, 2024 (weeks 11-24 through 22-24), respectively. Jurisdiction regarding claimant’s ability to work was taken over the weeks at issue in the latter amended administrative decision at the June 3, 2024, hearing.

2024 (weeks 11-24 through 22-24). These are the weeks at issue. The Department paid claimant benefits only for the weeks of March 10 through May 4, 2024 (weeks 11-24 through 18-24).

(4) On March 11, 2024, claimant began work at a job as an order picker that she secured through a staffing agency. When the duties were described to her during the job interview, claimant felt that what would be required of her fell within her limitations. However, these duties expanded on the first day of work, and she was unable to perform certain tasks, including lifting. Claimant therefore separated from this employment.

(5) On March 12, 2024, claimant was again treated for back pain that was exacerbated by the work attempt. Claimant was thereafter restricted from lifting more than 25 pounds, engaging in repetitive movements or walking for extended periods, in addition to the earlier limitations.

(6) Aside from assembly line work, claimant had previously worked in customer service, order picking, warehouse work, and janitorial work. During the weeks at issue, claimant applied for these types of jobs. Claimant believed that the employers from whom she sought work during this period could accommodate her physical limitations at the time she applied for each job.

(7) Claimant additionally sought assistance in finding work from two agencies that specialized in helping job seekers with physical limitations. She also sought assistance from WorkSource in expanding her work search to fields more likely to have positions available within her limitations.

(8) On June 3, 2024, claimant interviewed for an order picker position that she believed she could perform with accommodations. However, the interviewer informed claimant that their lifting requirement would exceed her limitations, and she was therefore not hired. Claimant believed that this was a representative example of how her work search had been conducted over the weeks at issue.

**CONCLUSIONS AND REASONS:** Claimant was able to work during the weeks at issue.

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). An individual shall be considered able to work in a particular week for purposes of ORS 657.155(1)(c) only if physically and mentally capable of performing the work the individual is actually seeking during all of the week. OAR 471-030-0036(2) (March 25, 2022).

Claimant was restricted from physically performing some activities commonly required in the types of work she sought. The order under review concluded that claimant's physical limitations "would essentially prevent her from engaging in [the work she was seeking] for any amount of time on a daily basis," rendering her unable to work during the weeks at issue. Order No. 24-UI-256215 at 4. The record does not support this conclusion.

Claimant sought work during the weeks at issue consistent with types of jobs she had previously held, and requested guidance from the Department's WorkSource office and elsewhere to expand her search to other fields consistent with her work experience and physical abilities. More likely than not, claimant's restrictions in standing, bending, stooping, walking, and lifting did not preclude her from

doing every type of work, as sedentary work and certain types of light work could presumably still be performed on a full-time basis.

Claimant's primary focus during the weeks at issue was on applying for janitorial and warehouse work, as she was most experienced in these fields, and it can be inferred that the physical requirements of these jobs varied. It was reasonable for claimant to believe that at least some positions in these fields could be performed with the ability to sit briefly as needed, without lifting more than 25 pounds, and would not exceed claimant's other limitations. Claimant's experience of applying for positions that reasonably appeared from the job description to meet these criteria, only to find out later that they did not, did not constitute seeking work that she was unable to perform. That the work claimant sought turned out later in the hiring process to be work that she was unable to perform did not mean that claimant failed to meet the requirements of OAR 471-030-0036(2). The record shows that claimant was able to perform the work she was actually seeking. Accordingly, claimant was able to work despite her physical limitations, as ability to work is defined by the rule, for each of the weeks at issue.

For these reasons, claimant was able to work each week from March 10 through June 1, 2024 (weeks 11-24 through 22-24) and is eligible for benefits for those weeks.<sup>3</sup>

**DECISION:** Order No. 24-UI-256215 is set aside, as outlined above.

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

**DATE of Service:** September 3, 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.

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<sup>3</sup> It should be noted that on June 21, 2024, the Department issued decision # L0004666529, concluding that claimant was ineligible for benefits for the weeks of March 10 through June 15, 2024 (weeks 11-24 through 24-24) on the basis of inability to work, and assessing an overpayment for benefits paid during those weeks. An appeal of that decision is pending at the Office of Administrative Hearings (OAH). EAB's decision here impacts claimant's eligibility for benefits for some of the weeks at issue in that administrative decision, as well as the overpayment assessed. The Department's records further suggest that a \$1,484 waiver of recovery of potentially overpaid benefits was allowed on July 23, 2024 (decision # L0005350776).



# 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 desisyong ito.

## 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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