

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0117

Reversed & Remanded

PROCEDURAL HISTORY: On May 23, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work for the week of May 12, 2024, through May 18, 2024 (week 20-24) and therefore ineligible to receive unemployment insurance benefits for that week (decision # L0004222565). On May 31, 2024, the Department served notice of an administrative decision concluding that claimant was not available for work for the week of May 19, 2024, through May 25, 2024 (week 21-24) and therefore ineligible to receive benefits for that week (decision # L0004357226). On June 4, 2024, the Department served notice of an administrative decision concluding that claimant was not available for work for the week of May 26, 2024, through June 1, 2024 (week 22-24) and therefore ineligible to receive benefits for that week (decision # L0004412324). On June 13, 2024, the Department served notice of an administrative decision concluding that claimant was not available for work for the week of June 2, 2024, through June 8, 2024 (week 23-24) and therefore ineligible to receive benefits for that week (decision # L0004509363). On September 16, 2024, the Department served notice of an administrative decision concluding that claimant was not available for work for the week of August 4, 2024, through August 10, 2024 (week 32-24) and therefore ineligible to receive benefits for that week (decision # L0006145452). Claimant filed timely requests for hearing on all five administrative decisions.

On January 28, 2025, ALJ Chiller conducted a consolidated hearing on all five decisions.¹ The Department failed to appear at the hearing. On February 6, 2025, ALJ Chiller issued Orders No. 25-UI-282222, 25-UI-282221, 25-UI-282219, 25-UI-282225, and 25-UI-282220, affirming decisions # L0004222565, L0004357226, L0004412324, L0004509363, and L0006145452, respectively. On February 19, 2025, claimant filed applications for review of all five orders with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 25-UI-282222, 25-UI-282221, 25-UI-282219, 25-UI-282225, and 25-UI-282220. For case-tracking purposes,

¹ UI Case No. 2024-UI-21160, regarding a monetary determination on claimant's claim, was addressed at a separate hearing, also on January 28, 2025. EAB's review of that matter is likewise addressed in a separate decision.

this decision is being issued in quintuplicate (EAB Decisions 2025-EAB-0116, 2025-EAB-0115, 2025-EAB-0117, 2025-EAB-0114, and 2025-EAB-0118).

WRITTEN ARGUMENT: Claimant filed written arguments on February 19, 2025, and March 3, 2025. Both of claimant's arguments contained information that was not part of the hearing record and did not show that factors or circumstances beyond his reasonable control prevented them 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. EAB considered any parts of claimant's arguments that were based on the hearing record.

The parties may offer new information, such as the additional information in claimant's written arguments into evidence at the remand hearing. At that time, it will be determined if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing regarding documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties in advance of the hearing at their addresses as shown on the certificate of mailing for the notice of hearing.

FINDINGS OF FACT: (1) On March 31, 2024, claimant filed an initial claim for unemployment insurance benefits. Claimant subsequently claimed benefits for the weeks of May 12, 2024, through June 8, 2024 (weeks 20-24 through 23-24) and August 4, 2024, through August 10, 2024 (week 32-24). These are the weeks at issue. The Department did not pay claimant benefits for the weeks at issue.

(2) Claimant's primary residence was in Beaverton, Oregon. Claimant also owned a residence in Idaho.

(3) Claimant worked as a certified public accountant (CPA) for Cost Advisors, Inc., a corporation of which he was the sole owner and corporate officer. Claimant did not report to any other person within the corporation. Claimant was licensed to work as a CPA for clients in Oregon and Washington. Claimant performed nearly all of his work for clients from home, either at his Oregon residence or Idaho residence.

(4) Claimant was at his property in Idaho from May 10, 2024, through July 1, 2024, and again from July 12, 2024, through November 2, 2024. During that time, claimant performed work for his clients as it arose. For some of the weeks during those periods, claimant worked 40 hours or more each week, or earned more than his weekly benefit amount. For each of the five weeks at issue, however, claimant's clients did not have sufficient work for him to either work 40 hours per week or earn more than his weekly benefit amount. Claimant therefore claimed benefits for those weeks.

(5) During each of the weeks at issue, claimant did not seek work with other employers. His work-related activities consisted solely of performing work for his clients, keeping in touch with his clients to determine what work would be needed in the future, and completing other business-related work.

CONCLUSIONS AND REASONS: Orders No. 25-UI-282222, 25-UI-282221, 25-UI-282219, 25-UI-282225, and 25-UI-282220 are set aside and these matters remanded for further development of the record.

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

* * *

(d) Physically present in the normal labor market area as defined by OAR 471-030-0036(6) (March 21, 2022), every day of the week, unless:

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

* * *

OAR 471-030-0036(3) (March 21, 2022).

An individual’s normal labor market area is “the geographic area surrounding the individual’s permanent residence within which employees in similar circumstances are generally willing to commute to seek and accept the same type of work at a comparable wage,” as defined by employees of the Department based on these criteria. OAR 471-030-0036(6)(a). When an individual seeks work through a union hiring hall, the individual’s normal labor market area for the work sought is the normal referral jurisdiction of the union, as indicated by the applicable contract. OAR 471-030-0036(6)(b).

At issue in these matters is whether claimant was within his “normal labor market area every day of the week,” as required OAR 471-030-0036(3)(d); or, if he was not, whether he met the exception of “actively seeking work outside his or her normal labor market area” under OAR 471-030-0036(3)(d)(A). If claimant did not meet either of these requirements, he would not be considered available for work, and therefore not eligible for benefits, for the weeks at issue. The orders under review concluded that claimant was not available for work during the weeks at issue because he was outside his normal labor market during those weeks and did not conduct any work seeking activities during those weeks. *See, e.g.,* Order No. 24-UI-282222 at 4–5. The record as developed does not support this conclusion.

First, the orders under review determined that because claimant’s primary residence was in Beaverton, Oregon, his “regular labor market does not include Idaho.” *See, e.g.,* Order No. 24-UI-282222 at 4. However, the authority to determine claimant’s labor market is delegated by OAR 471-030-0036(6)(a) to “employees of the Employment Department.” The Department did not appear at the hearing to testify as to what claimant’s normal labor market was, and the record does not otherwise contain evidence to show what determination, if any, the Department made on that point. As such, remand is required to determine what claimant’s normal labor market was for the weeks at issue and whether the determination of what constitutes claimant’s labor market is impacted by claimant’s remote work. Such a finding is necessary to determine whether claimant was actually outside of his regular labor market during those weeks. Thus, the record on remand must be developed on this point.

Next, even if the record on remand shows that claimant *was* outside of his normal labor market for the weeks at issue, further inquiry is necessary to determine whether claimant’s work activities conducted in the course of his business were sufficient to meet the requirements that he actively seek work outside his normal labor market area. To be clear, the sole legal question in these matters is whether claimant was

available for work during the weeks at issue, not whether he met the separate requirements of *actively seeking work* during those weeks.² However, because the question of whether claimant was available for work may depend, in this case, on a factual determination of whether he actively sought work during those weeks, the record will require development on that point if claimant is shown to have been out of his normal labor market.

At hearing, claimant testified that the Department “classified” him as temporarily unemployed for the weeks at issue. Transcript at 6–7. If claimant was temporarily unemployed during the weeks at issue, the administrative rules would only require him to “remain in contact with [his] regular employer and [be] capable of accepting and reporting for any suitable work with that employer” in order to be considered actively seeking work during those weeks.³ Given that the Department does not appear to have issued separate decisions concluding that claimant failed to actively seek work for the weeks at issue, and that the record does not contain evidence which contradicts claimant’s assertion that he was determined to be temporarily unemployed during those weeks, it is not necessary to further develop the record on that point. Nevertheless, questions remain regarding the application of claimant’s temporarily-unemployed status to the question of whether he qualified for the exception under OAR 471-030-0036(3)(d)(A).

Thus, on remand, the ALJ should inquire as to what claimant’s normal labor market was determined to be, as well as whether the Department considers individuals capable of performing their work remotely to have broader normal labor markets (in this case, claimant’s second property in Idaho) than simply a narrow geographic area around their primary residence. Additionally, the ALJ should inquire as to whether the Department considers claimant’s temporarily unemployed status, and the actively seeking work requirement attendant to that status, to apply to situations in which OAR 471-030-0036(3)(d)(A) is applicable. As such, the Department should produce a witness at the remand hearing who is knowledgeable on such matters.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord* *Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary for a determination of whether claimant was available for work during the weeks at issue, Orders No. 25-UI-282222, 25-UI-282221, 25-UI-282219, 25-UI-282225, and 25-UI-282220 are reversed, and these matters are remanded.

DECISION: Orders No. 25-UI-282222, 25-UI-282221, 25-UI-282219, 25-UI-282225, and 25-UI-282220 are set aside, and these matters remanded for further proceedings consistent with this order.

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

DATE of Service: March 24, 2025

² See OAR 471-030-0036(5).

³ See OAR 471-030-030-0036(5)(b).

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 25-UI-282222, 25-UI-282221, 25-UI-282219, 25-UI-282225, and 25-UI-282220 or return these matters to EAB. Only timely applications for review of the subsequent orders will cause these matters to return to EAB.

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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

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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 دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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