

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0152

Reversed
Eligible Week 52-24

PROCEDURAL HISTORY: On January 8, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work during the week of December 22, 2024 through December 28, 2024 (week 52-24) and was therefore ineligible to receive unemployment insurance benefits for that week (decision # L0008160934). Claimant filed a timely request for hearing. On February 20, 2025, ALJ Lucas conducted a hearing at which the Department failed to appear, and on February 21, 2025 issued Order No. 25-UI-283758, affirming decision # L0008160934.¹ On March 5, 2025, 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. EAB considered any parts of claimant's argument that were based on the hearing record.

FINDINGS OF FACT: (1) On or around June 25, 2024, claimant filed an initial claim for unemployment insurance benefits that the Department determined was monetarily valid. At the time, claimant was employed full-time by a school district in a clerical position and was not offered work during the customary summer break.

(2) From December 22, 2024 through January 4, 2025, the schools in the district for which claimant worked were closed for the customary winter break, and the employer informed claimant that there would be no work available for him during this time. Claimant was to resume working full-time on January 5, 2025.

¹ The order concluded that claimant was available for work, but not actively seeking work, during week 52-24, and for that reason was ineligible to receive benefits for the week. Order No. 25-UI-283758 at 5-6.

(3) Claimant claimed benefits for the week of December 22, 2024 through December 28, 2024 (week 52-24). This is the week at issue. The Department did not pay claimant benefits for the week at issue. During the week, claimant did not leave the metropolitan area in which his home and the school district were located. There were no circumstances that would have impaired claimant's ability to immediately resume working for the employer during the week if they requested that he do so. Claimant remained accessible by phone to the employer during the week, though neither party attempted to contact the other during that time. Claimant did not seek work with other employers during the week.

(4) On January 8, 2025, the Department issued decision # L0008160934, concluding that claimant was "not available for work" during the week at issue because he "left [his] labor market for unknown reasons and didn't meet [the] requirements" of having looked for and been willing and able to accept work in that area, or having been traveling for a job interview. Exhibit 1 at 1.

CONCLUSIONS AND REASONS: Claimant was available for work and actively seeking work during the week at issue.

To be eligible to receive benefits, unemployed individuals must be available for 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 * * *.

* * *

OAR 471-030-0036(3).

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) 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 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.

The order under review concluded that claimant was available for work during the week at issue but was not actively seeking work because, though “temporarily unemployed” within the definition of the rule, claimant did not “remain in contact” with his employer as required by the rule. Order No. 25-UI-283758 at 5-6. The record supports that claimant was available for work, but does not support that claimant was not actively seeking work.

Claimant testified that he was willing to work full time, part time, and accept temporary work opportunities, during all hours and days of the week at issue, and was capable of immediately beginning such work if it was offered. Audio Record at 12:17 to 12:34, 13:01. Claimant further testified that he had no limitations on his ability to work, other than that he intended to return to his full-time work with the employer on January 5, 2025. Audio Record at 12:35. Additionally, claimant testified that he lived and worked in Portland, Oregon, and did not leave the Portland area during the week at issue. Audio Record at 10:45 to 11:23. It can reasonably be inferred that the Portland area was claimant’s “normal labor market area,” as defined by rule. Accordingly, claimant met all the criteria to be considered “available for work” for purposes of ORS 657.155(1)(c).

However, the record shows that claimant did not make efforts to seek work with other employers during the week at issue, and inquiry was therefore made at hearing into whether claimant was actively seeking work as required by rule. Claimant was unemployed during the week at issue due to a lack of work while his employer’s schools were closed for a customary winter break from December 22, 2024 through January 4, 2025. Claimant worked full-time in the week prior to the week the break began, and was expected to return to full-time work in the week after the break ended. Because the period of unemployment lasted only two weeks, as expected, it did not exceed the four-week limitation in the

rule's definition of "temporarily employed." As discussed above, claimant was capable of accepting and reporting for any suitable work with his employer during the week at issue. Therefore, whether claimant was actively seeking work during the week at issue, as a temporarily unemployed individual, turns on whether claimant "remain[ed] in contact" with his employer under OAR 471-030-0036(5)(b)(A).

Claimant was asked at hearing if he "remain[ed] in contact with [his] employer" during the week at issue, and claimant replied, "I would say yes. I didn't. . . have any contact with them, but I could have contacted them, and they could have contacted me." Audio Record at 19:02. Given that his employer's schools were closed for a scheduled break and that they had informed claimant that no work would be available for him during the break, claimant's efforts to be reachable by the employer were sufficient to satisfy the requirement that he "remain in contact" with them. Further, that the Department issued decision # L0008160934, citing only for their conclusion that claimant was ineligible to receive benefits for the week at issue their mistaken assertion that claimant was not present in his normal labor market area, suggests that the Department was not in receipt of information contradicting claimant's testimony that he remained in contact with his employer. It is therefore reasonable to infer that the Department had not concluded that a failure to actively seek work was a basis for asserting claimant's ineligibility to receive benefits for the week at issue. Under these circumstances, claimant has shown that he remained in contact with his employer during the week at issue, and met all other requirements to be considered actively seeking work under OAR 471-030-0036(5)(b).

For these reasons, claimant was available for work and actively seeking work during the week of December 22, 2024 through December 28, 2024 (week 52-24) and is eligible to receive benefits for the week on that basis.

DECISION: Order No. 25-UI-283758 is set aside, as outlined above.

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

DATE of Service: April 7, 2025

NOTE: This decision reverses the ALJ's order denying claimant benefits. Please note that in most cases, payment of benefits owed will take about 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 stated above**. See ORS 657.282. For forms and information, visit <https://www.courts.oregon.gov/courts/appellate/forms/Pages/appeal.aspx> and choose the appropriate form under "File a Petition for Judicial Review." You may also contact the Court of Appeals by telephone at (503) 986-5555, by fax at (503) 986-5560, or by mail at 1163 State Street, Salem, Oregon 97301.

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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 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.

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