

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0327

Affirmed
Ineligible Weeks 13-25 through 20-25

PROCEDURAL HISTORY: On April 15, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work because she was not legally authorized to work in the United States, and therefore was ineligible for benefits beginning March 23, 2025 (decision # L0010311056). Claimant filed a timely request for hearing. On May 27, 2025, ALJ Monroe conducted a hearing, and on May 30, 2025, issued Order No. 25-UI-293665, modifying decision # L0010311056 by concluding that claimant was not eligible for benefits from March 23 through May 17, 2025 (weeks 13-25 through 20-25).¹ On June 4, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant filed written arguments on June 4 and 17, 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 claimant's reasonable control prevented her 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.

Decision # L0010311056, as modified by Order No. 25-UI-293665, denied claimant benefits because she was not authorized to work in the United States during the weeks at issue. In her June 17, 2025, argument, claimant acknowledged that she was not authorized to work in the United States, and was not "disputing any laws or regulations regarding unemployment claims." Claimant's June 17, 2025, Written Argument at 3. Nevertheless, claimant asserted that she should be allowed benefits because she was unemployed "due to no fault of [her own]," suggested that the ALJ should have "look[ed] beyond the law" to consider claimant's individual circumstances in determining whether claimant was eligible for benefits, and requested that EAB "consider [her] unemployment claim on humanitarian grounds[.]" Claimant's June 17, 2025, Written Argument at 2, 4.

¹ Although Order No. 25-UI-293665 stated it affirmed decision # L0010311056, it modified that decision by changing the dates of ineligibility. Order No. 25-UI-293665 at 3.

Claimant's position is sympathetic, as both her unemployment and her ineligibility for benefits are the apparent result of the United States Citizenship and Immigration Service's (USCIS) failure to timely process her application for renewal of her work authorization. Nevertheless, while claimant is correct that unemployment insurance benefits are, broadly, intended for individuals who are unemployed due to no fault of their own, merely being unemployed through no fault of one's own is not the only requirement for eligibility. Here, ORS 657.155(1)(c) requires, as a condition of eligibility, that an individual be available for work. In turn, OAR 471-030-0036(3)(b) (March 25, 2022) states that for an individual to be considered available for work, they must be "[c]apable of accepting and reporting for any suitable work opportunities within the labor market in which work is being sought[.]" Because claimant was not authorized to work in the United States during the weeks at issue, she was not capable of accepting work during those weeks, and therefore was not available for work under ORS 657.155.

The above requirements apply regardless of whether an individual's circumstances were their fault. By way of analogy, ORS 657.155(1)(c) also requires that an individual be *able* to work, meaning that they must, in general, be "physically and mentally capable of performing the work" they are seeking. OAR 471-030-0036(2). Thus, if, for instance, an individual is struck by an illness that leaves them completely unable to perform any work for an entire week, they would not be considered able to work, and therefore ineligible for benefits for that week, despite the fact that their illness was not their fault. Claimant's circumstances are similar. Although it is not claimant's fault that she was not available for work because of the delay in processing her work authorization renewal, the question of fault is not relevant here because the law requires that she be available for work.

Again, claimant's circumstances are regrettable. However, EAB lacks the authority to disregard the law, regardless of the hardships she faces or the fact that those hardships are not the result of her own actions, as benefit eligibility is determined based on specific legal criteria rather than need. In addition to the state law cited above, the Department must, under federal law, require individuals who are not United States citizens to show that they are authorized to work in the United States as a condition of benefit eligibility.² Neither the Department, nor an ALJ or EAB, may circumvent this requirement.

Finally, claimant stated that when a "similar situation occurred" in 2021, she received benefits "for 8 weeks in April to May 2021." Claimant's June 17, 2025, Written Argument at 4. To the extent that claimant is suggesting here that she should be allowed benefits in this case because she was allowed benefits under similar circumstances in 2021, claimant should note the crucial difference between her circumstances in 2021 and those she faces in 2025. Department records show that claimant *was* paid benefits for a period of five weeks (May 23 through June 19, 2021). However, Department records also show that claimant had provided proof of her work authorization for that year, which was effective as of March 24, 2021. In other words, unlike in the present circumstances, claimant was authorized to work in the United States during the five weeks of benefits she was paid for in 2021. Thus, the fact that claimant was paid benefits in 2021 after meeting the applicable eligibility requirements does not mean that she is eligible for benefits in 2025 despite not meeting those requirements.

ADOPTION OF HEARING ORDER: EAB considered the entire hearing record, including witness testimony and any exhibits admitted as evidence. EAB agrees with Order No. 25-UI-293665's findings

² See generally 42 U.S.C. §1320b-7(d).

of fact, reasoning, and conclusion that claimant was ineligible for benefits for weeks 13-25 through 20-25. Order No. 25-UI-293665 is **adopted**. *See* ORS 657.275(2).

DECISION: Order No. 25-UI-293665 is affirmed.

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

DATE of Service: July 10, 2025

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

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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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