

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0374

Reversed
Eligible Week 10-25

PROCEDURAL HISTORY: On May 5, 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 March 2, 2025 through March 8, 2025 (week 10-25) and was therefore ineligible to receive unemployment insurance benefits for that week (decision # L0010609722). Claimant filed a timely request for hearing. On June 11, 2025, ALJ Griffith conducted a hearing at which the Department failed to appear, and on June 13, 2025, issued Order No. 25-UI-294955, affirming decision # L0010609722. On June 17, 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 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 argument that were based on the hearing record.

FINDINGS OF FACT: (1) On March 19, 2025, claimant filed an initial claim for unemployment insurance benefits that the Department determined was monetarily valid.¹ Thereafter, claimant claimed benefits for the week of March 2, 2025 through March 8, 2025 (week 10-25). This is the week at issue. The Department paid claimant benefits for the week at issue.

(2) Claimant's normal labor market was the area in and around Bend, Oregon, where she resided. Portland, Oregon was outside of claimant's normal labor market area.

¹ EAB has taken notice of this fact, which is contained in Employment Department records. OAR 471-041-0090(1). Any party that objects to EAB taking notice of this information must send their objection to EAB in writing, stating why they object, within ten days of EAB mailing this decision. OAR 471-041-0090(2). Unless EAB receives and agrees with the objection, the noticed fact will remain in the record.

(3) On Wednesday, March 5, 2025, claimant left Bend to accompany her husband to Portland for a medical procedure. Claimant remained in Portland until returning to Bend at approximately 3:00 p.m. on Saturday, March 8, 2025. Claimant was not seeking work to be performed in Portland during this time.

(4) While claimant was in Portland, she was reachable by potential employers in her normal labor market via telephone and email, and would have returned to Bend and begun work immediately during that time if it was offered.

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

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, unless:

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

(B) The individual is infrequently absent from the normal labor market area for reasons unrelated to work search, for less than half of the week, and no opportunity to work or referral to work was missed by such absence.

* * *

OAR 471-030-0036(3) (March 25, 2022).

OAR 471-030-0036(6) provides, in relevant part:

(a) An individual's normal labor market shall be 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. The geographic area shall be defined by employees of the Employment Department, based on criteria set forth in this section[.]

* * *

During the week at issue, claimant was willing to accept full time, part time, and temporary work opportunities, and testified that she was capable of, and willing to, immediately begin any work offered, even while her husband was undergoing or recovering from surgery from March 5 through 8, 2025. Audio Record at 9:10. Claimant also testified that she remained reachable by potential employers while in Portland, suggesting that she did not miss any opportunity to work or referral to work during that time. Audio Record at 6:00. Although under the rule the Department is responsible for determining a claimant's normal labor market, it did not participate in the hearing, and it is therefore reasonable to infer that claimant's normal labor market was the area in and around Bend, where she resided. Therefore, while the record shows that claimant met the other availability requirements set forth in OAR 471-030-0036(3), claimant was not physically present in her normal labor market area for each day of the week at issue for reasons unrelated to her work search. Accordingly, whether she was available for work under the rule turns on whether her absence from the Bend area was "for less than half the week." OAR 471-030-0036(3)(d)(B). Because the Department paid claimant benefits for the week at issue, it bears the burden to prove by a preponderance of the evidence that she was not entitled to benefits. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).²

The order under review concluded that claimant was unavailable for work under the rule because she "was not physically present in her labor market area every day of the benefit week at issue, and the law does not provide for any exceptions to the physical presence requirements under OAR 471-030-0036(d)." Order No. 25-UI-294955 at 3. While the record supports the conclusion that claimant was not present in her labor market area every day of the week at issue, OAR 471-030-0036(d) does contain an exception to this requirement, as discussed above, and the record shows that claimant met this exception and was therefore available for work.

A week consists of 168 hours, and half of a week consists of 84 hours. Claimant testified that she was outside of the Bend area from Wednesday, March 5, 2025, until Saturday, March 8, 2025, at approximately 3:00 p.m. Audio Record at 7:00. Claimant was therefore absent from her normal labor market area for 24 hours each day on March 6 and 7, and 15 hours on March 8, 2025, totaling 63 hours. Claimant would therefore have to have been outside the Bend area on March 5, 2025 for at least 21 hours to have been absent from her normal labor market area for half or more of the week. The record is silent as to what time claimant left Bend for Portland on March 5, 2025, and therefore does not show by a preponderance of the evidence that claimant left Bend at or before 3:00 a.m. that day, which would be necessary to show that claimant was absent from her normal labor market area for at least 21 hours. Therefore, the Department has not met its burden to show that claimant was, more likely than not, absent from her normal labor market area for half or more of the week at issue. Accordingly, the exception in OAR 471-030-0036(d)(B) applies, and claimant cannot be considered unavailable under the rule due to her temporary absence from her normal labor market area. As claimant met each of the rule's other requirements, as previously discussed, claimant was available for work during the week at issue.

² However, the burden to prove availability for work shifts to claimant if the Department proves that claimant left the normal labor market area "for the major portion of" the week at issue. *See* ORS 657.155(2)(a).

For these reasons, claimant was available for work during the week of March 2, 2025 through March 8, 2025 (week 10-25) and is eligible to receive unemployment insurance benefits for that week.

DECISION: Order No. 25-UI-294955 is set aside, as outlined above.

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

DATE of Service: July 24, 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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