

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0408

Order No. 25-UI-296543 Modified –Eligible Weeks 16-24 through 33-24
Order No. 25-UI-296542 Affirmed –Ineligible Weeks 24-24 through 33-24
Order No. 25-UI-296541 Affirmed –Ineligible Weeks 16-24 through 33-24

PROCEDURAL HISTORY: On October 8, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not able to work from April 14 through August 17, 2024 (weeks 16-24 through 33-24) and was not eligible for benefits for those weeks (decision # L0006549658). Also on October 8, 2024, the Department served notice of an administrative decision concluding that claimant was not available for work from June 9 through August 17, 2024 (weeks 24-24 through 33-24) and was not eligible for benefits for those weeks (decision # L0006502614). On September 27, 2024, the Department served notice of an administrative decision concluding that claimant had failed to actively seek work from April 14 through August 31, 2024 (weeks 16-24 through 35-24) and therefore was not eligible for benefits for those weeks (decision # L0006297976). On September 30, 2024, claimant filed a timely request for hearing on decision # L0006297976. On October 8, 2024, the Department issued decision # L0006490405, which amended decision # L0006297976 by concluding that claimant had failed to actively seek work during weeks 16-24 through 33-24 and was not eligible for benefits for those weeks.

Claimant filed timely requests for hearing on decisions # L0006549658 and L0006502614. Claimant's September 30, 2024 request for hearing on decision L0006297976 was treated as a timely request for hearing on decision # L0006490405. On June 24, 2025, ALJ Bender conducted a hearing on decisions # L0006549658, L0006502614, and L0006490405. On July 2, 2025, ALJ Bender issued Order No. 25-UI-296543, modifying decision # L0006549658 by concluding that claimant was not able to work from April 14 through May 25, 2024 (weeks 16-24 through 21-24), but was able to work from May 26 through August 17, 2024 (weeks 22-24 through 33-24). Also on July 2, 2025, ALJ Bender issued Orders No. 25-UI-296542 and 25-UI-296541, affirming decisions # L0006502614 and L0006490405.

On July 9, 2025, claimant filed applications for review of Orders No. 25-UI-296543, 25-UI-296542, and 25-UI-296541 with the Employment Appeals Board (EAB). EAB combined its review of Orders No. 25-UI-296543, 25-UI-296542, and 25-UI-296541 under OAR 471-041-0095 (October 29, 2006). For case-

tracking purposes, this decision is being issued in triplicate (EAB Decisions 2025-EAB-0409, 2025-EAB-0408, and 2025-EAB-0410).

WRITTEN ARGUMENT: Claimant did not state that she provided a copy of her argument to the employer as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained information that was not part of the hearing record and did not show that factors or circumstances beyond claimant's reasonable control prevented them from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only the information received into evidence at the hearing. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Providence Health and Services (the employer) employed claimant as a financial counselor. In March 2023, claimant gave birth to twins. On March 14, 2023, claimant took a medical leave of absence from work. At some point thereafter, claimant filed an initial claim for benefits.

(2) Initially, claimant's medical leave was based on complications relating to claimant's C-section incision following the delivery of her twins. However, the leave was also based on a "mental issue" relating to depression and anxiety claimant experienced. Transcript at 14. In October 2023, claimant worked for about a week but then was "pulled back out for the issues that [she] had," and her medical leave continued. Transcript at 11. As of March 2024, claimant's medical leave was based on her depression and anxiety conditions.

(3) On March 31, 2024, claimant's medical provider released claimant to work part-time, 20 hours per week, with claimant deemed capable of working full-time after 60 days (approximately May 30, 2024). Upon being authorized to perform part-time work, claimant wished to work as a financial counselor again for the employer. However, at that time, the employer did not have a part-time position available for claimant.

(4) On June 8, 2024, claimant began an educational leave of absence to attend cosmetology school. From that point forward, claimant attended school full-time.

(5) Claimant claimed benefits for the weeks of April 14 through August 17, 2024 (weeks 16-24 through 33-24). These are the weeks at issue. The Department did not pay claimant benefits for the weeks at issue.

(6) Claimant sought only to work again in her job for the employer as a financial counselor during the weeks at issue. Claimant did not perform any work seeking activities during the weeks at issue. Claimant's labor market area was the Medford, Oregon area, and financial counseling work was customarily performed in claimant's labor market Sunday to Saturday during all shifts.¹

CONCLUSIONS AND REASONS: Order No. 25-UI-296543 is modified. Orders No. 25-UI-296542 and 25-UI-296541 are affirmed. Claimant was able to work during weeks 16-24 through 33-24 and is

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.

not ineligible for benefits on the basis of her ability to work. However, she failed to actively seek work for the entire period, and was not available for work during weeks 24-24 through 33-24. Because claimant failed to actively seek work for the entire period, she was not available for work during weeks 24-24 through 33-24, and is not eligible for benefits for 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). The Department concluded that claimant did not meet these requirements for weeks 16-24 through 33-24, the weeks at issue, and did not pay her benefits. Claimant has the burden to prove that the Department should have paid her benefits for at weeks at issue. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

Order No. 25-UI-296543 – Able to Work. 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 except that an individual prevented from working full time or during particular shifts due to a permanent or long-term “physical or mental impairment” as defined at 29 CFR §1630.2(h) shall not be deemed unable to work solely on that basis so long as the individual remains available for some work. OAR 471-030-0036(2), (2)(b) (March 25, 2022).

Order No. 25-UI-296543 concluded that claimant was not able to work during the weeks of April 14, 2024 through May 25, 2024 (weeks 16-24 through 21-24), because she was medically restricted to part-time work through week 21-24 and therefore not capable of performing the work during those weeks. Order No. 25-UI-296543 at 2-3. The order concluded that claimant was able to work the remaining weeks, weeks 22-24 through 33-24. Order No. 25-UI-296543 at 2-3. The record does not support the order’s conclusion that claimant was not able to work during weeks 16-24 through 21-24.

Claimant remained able to work during the weeks she was restricted to part-time work because her circumstances met the standard set forth in OAR 471-030-0036(2)(b) for an individual with a long-term impairment as defined at 29 CFR §1630.2(h). Claimant was an individual with a long-term impairment that prevented her from working full-time because she had depression and anxiety. Transcript at 14. Her depression and anxiety began at least as early as October 2023, when she was “pulled back out [from work] for the issues that [she] had,” and the conditions were the bases of her medical leave as of March 2024. Thus, the depression and anxiety were long-term in nature. Claimant remained available for some work during weeks 16-24 through 21-24 because her medical provider had authorized her to perform part-time work during that period. Therefore, under OAR 471-030-0036(2)(b), claimant was considered able to work during weeks 16-24 through 21-24.

Claimant was also able to work for the remaining weeks at issue, weeks 22-24 through 33-24. For week 22-24, the week of May 26, 2024 through June 1, 2024, claimant remained authorized to work part-time through approximately May 30, 2024 and so was able to work pursuant to OAR 471-030-0036(2)(b). On or about May 31, 2024, claimant was authorized to work full-time work and so was physically and mentally capable of performing work during weeks 23-24 through 33-24. On June 9, 2024, claimant took an educational leave of absence to attend cosmetology school. However, claimant’s school attendance did not alter her ability to work as she remained physically and mentally capable of working regardless of her school attendance.

For these reasons, claimant was able to work during all the weeks at issue. Order No. 25-UI-296543 is modified to reflect that claimant was able to work during weeks 16-24 through 33-24, and is not ineligible for benefits on that basis.

Order No. 25-UI-296542 – Available for Work. For an individual to be considered “available for work” for purposes of ORS 657.155(1)(c), they must be:

* * *

(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

* * *

OAR 471-030-0036(3).

Notwithstanding the provisions of OAR 471-030-0036(3), an individual with a circumstance which restricts their availability such as, but not limited to, lack of childcare, caring for an immediate family member or another person in their household, lack of transportation, or attendance in school or training to improve their job skills or long-term employment opportunities, will not be deemed unavailable for work if:

(a) The work the individual is seeking or is otherwise willing to seek is customarily performed during other days and hours in the individual’s normal labor market area as defined by OAR 471-030-0036(6); and

(b) The individual is willing and capable of working full time during other days and hours for which they could reasonably expect employers to schedule them.

OAR 471-030-0036(4).

The period covered by Order No. 25-UI-296542 and the underlying administrative decision is June 9 through August 17, 2024, weeks 24-24 through 33-24. This is the period claimant attended cosmetology school full-time and was on an educational leave of absence.

Claimant was not available for work during weeks 24-24 through 33-24. Applying OAR 471-030-0036(3)(b), claimant was not capable of accepting and reporting for any suitable work opportunities because the work she sought was customarily performed Sunday to Saturday during all shifts and her full-time school schedule would necessarily conflict with any work opportunity arising during a time she was in class. Applying OAR 471-030-0036(3)(c), by attending school, claimant imposed a condition that substantially reduced her opportunities to return to work at the earliest possible time, as her full-time

school schedule would interfere with any work opportunity occurring during the hours and days that she was called upon to be in school.

It is possible for an individual whose school attendance restricts their availability to be deemed available for work under OAR 471-030-0036(4). However, claimant did not meet her burden to prove that OAR 471-030-0036(4) applied to her circumstances. While financial counseling work was customarily performed Sunday to Saturday during all shifts, it is not evident that claimant was capable of working full time during other days and hours for which employers might schedule her, given that she was attending school full time and also presumably had parenting responsibilities relating to her twins. 1.

For these reasons, claimant was not available for work during weeks 24-24 through 33-24. Claimant was therefore ineligible for benefits for those weeks.

Order No. 25-UI-296541 – Actively Seeking Work. With few exceptions that do not apply here, to be actively seeking work as required under ORS 657.155(1)(c), an individual “must conduct at least five work-seeking activities per week,” with two of the five work-seeking activities being a direct contact with an employer who might hire the individual. OAR 471-030-0036(5)(a) “Direct contact” means “making contact with an employer in person, by phone, mail, or electronically to inquire about a job opening or applying for job openings in the manner required by the hiring employer.” OAR 471-030-0036(5)(a)(B).

During the weeks at issue, claimant did not perform any work seeking activities. Claimant was employer-attached throughout the weeks at issue, first on a medical leave of absence beginning in March 2023 and then on an educational leave. Claimant sought only to work again in her job for the employer as a financial counselor during the weeks at issue, and did not perform any other work-seeking activities during those weeks.

Note that under OAR 471-030-0036(5)(b), an individual who is temporarily unemployed is considered to be actively seeking work if they remain in contact with their regular employer and are capable of accepting and reporting for any suitable work with that employer. OAR 471-030-0036(5)(b). However, to be a temporarily unemployed individual, among other things, there must be a reasonable expectation that the person will be returning to work for their regular employer, and the period of temporary unemployment cannot be greater than four weeks. *See* OAR 471-030-0036(5)(b)(B) and (D)(ii).

Claimant was not a temporarily unemployed individual. Upon being authorized to perform part-time work on March 31, 2024, claimant wished to work again for the employer in her financial counselor position, but the employer did not have a position available. Claimant was deemed capable of working full-time by approximately May 30, 2024. However, that date was more than four weeks after the first week at issue in this case, the week of April 14 through 20, 2024 (week 16-24). Further, claimant did not in fact return to work at that time, but instead, shortly thereafter, took an educational leave. Therefore, the record fails to show that claimant had a reasonable expectation of returning to work for the employer, and claimant did not establish that she was a temporarily unemployed individual. As claimant was not a temporarily unemployed individual, the requirement of OAR 471-030-0036(5)(a) to conduct five work-seeking activities per week applies to claimant.

Because claimant did not conduct at least five work-seeking activities per week, she did not actively seek work during the weeks at issue. Accordingly, claimant was ineligible for benefits for those weeks.

DECISION: Order No. 25-UI-296543 is modified, as outlined above. Orders No. 25-UI-296542 and 25-UI-296541 are affirmed.

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

DATE of Service: August 15, 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

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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