

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0431

Modified
Late Request for Hearing Allowed
Reversed & Remanded

PROCEDURAL HISTORY: On March 13, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant did not actively seek work for the week of January 5, 2025 through January 11, 2025 (week 02-25) and therefore was ineligible to receive unemployment insurance benefits for that week (decision # L0009663575). On April 2, 2025, decision # L0009663575 became final without claimant having filed a request for hearing. On May 16, 2025, claimant filed a late request for hearing on decision # L0009663575. ALJ Kangas considered claimant's request, and on May 22, 2025, issued Order No. 25-UI-292932, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by June 5, 2025. On May 28, 2025, claimant filed a timely response to the appellant questionnaire. On June 16, 2025, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 25-UI-292932 was vacated and that a hearing would be scheduled to determine whether claimant had good cause to file the late request for hearing and, if so, the merits of decision # L0009663575. On July 1, 2025, ALJ Bender conducted a hearing at which the Department did not appear, and on July 11, 2025, issued Amended Order No. 25-UI-297326,¹ allowing claimant's late request for hearing on decision # L0009663575 and affirming that decision on the merits. On July 16, 2025, claimant filed an application for review of Amended Order No. 25-UI-297326 with the Employment Appeals Board (EAB).

PARTIAL ADOPTION: EAB considered the entire hearing record, including witness testimony and any exhibits admitted as evidence. EAB agrees with the part of Amended Order No. 25-UI-297326 allowing claimant's late request for hearing on decision # L0009663575. That part of Amended Order No. 25-UI-297326 is **adopted**. See ORS 657.275(2).

¹ Amended Order No. 25-UI-297326 amended Order No. 25-UI-297081, issued on July 9, 2025, to correct typographical errors.

FINDINGS OF FACT: (1) In early January 2025, claimant filed an initial claim for unemployment insurance benefits with an effective date of December 29, 2024, and a weekly benefit amount of \$196.² Claimant subsequently claimed benefits for the week of January 5, 2025 through January 11, 2025 (week 02-25). This is the week at issue. The Department did not pay claimant benefits for the week at issue.

(2) Claimant filed her weekly claim for the week at issue using a paper form which she filed with the help of staff at a WorkSource Oregon office. On that form, dated January 24, 2025, claimant marked that she had actively sought work during that week. Exhibit 1 at 5–6.

CONCLUSIONS AND REASONS: Amended Order No. 25-UI-297326 is set aside and this matter remanded for further development of the record.

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) (March 25, 2022). “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).

The order under review concluded that claimant did not actively seek work during the week at issue, based on a finding that the paper form claimant used to claim the week “did not include the specific work activities claimant did as part of her work search that week.” Amended Order No. 25-UI-297326 at 2. The order under review further explained that the Department’s “notes indicated that this section of the claim form for listing specific activities was left blank, and the copy claimant submitted with her request for hearing does not include that section.” Amended Order No. 25-UI-297326 at 5. The record as developed is insufficient to decide if claimant actively sought work during the week at issue.

As a preliminary matter, the order under review improperly relied on information not in the record to make its determination, as the Department did not appear at the hearing or submit evidence into the record, and the order under review did not take notice of the notes referred to in the above passage. Furthermore, even if those notes were part of the record, the order under review may have misconstrued their meaning.

Department records show that on March 1, 2025, a Department representative entered the following note into claimant’s claim:

Working UI Support SS List - Clmt filed paper cert 1/24/25 w/ WSO, signed 1/24/25. WC did not include WSA, but indicated ASW; ASW BI issue WE 1/11/25 & LR WE 1/11/25; Uploaded paper WC to both ASW 352-NJV8-FM37 & LR 352-NJVF-HD76 & staged to FF

² EAB has taken notice of these facts, which are contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). Any party that objects to EAB taking notice of this information must send their objection to EAB in writing, saying 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 facts will remain in the record.

The “paper cert” mentioned above refers to the paper weekly claim form that claimant filed for the week at issue. A copy of that form was admitted into evidence, but the section where claimant was directed to enter her work-seeking activities for the week was cut off, possibly by a WorkSource office. *See* Exhibit 1 at 5–6. Regardless, a further review of Department records suggests that this copy appears to be the only one in the Department’s possession. Based on that, it is reasonable to infer that the Department representative who reviewed the form on March 1, 2025 (more than a month after it was completed) was viewing the same version of the form that is now in the record. Thus, it is not accurate to say that claimant left blank the section detailing her work-seeking activities for the week. Rather, that section is *missing* from the record. As the record currently does not contain evidence to corroborate what information, if any, was entered into the now-missing section, an inference that it was left blank is not supported by substantial evidence.

Claimant stated on the paper form that she had actively sought work during the week at issue. Claimant further indicated on her hearing request that she “was looking [*sic*] 5 seeking activities.” Exhibit 1 at 4. Likewise, at hearing, claimant testified that she had performed five work seeking activities. Audio Record at 15:10. Claimant also expressed concern that the Department had failed to save a copy of her work search history. Transcript at 15:24. The record does not contain details of the work-seeking activities, if any, that claimant completed during the week at issue. However, the order under review erroneously found that claimant “did not recall the work search activities she engaged in during the week at issue.” Amended Order No. 25-UI-297326 at 2. In fact, claimant was never asked at the hearing to provide this information, and thus did not testify that she could not remember which activities she performed.

On remand, the ALJ should conduct a thorough inquiry to determine whether claimant actively sought work during the week at issue, January 5, 2025 through January 11, 2025. This should begin with an inquiry as to what work-seeking activities claimant performed during the week at issue. If claimant is unable to recall this information or does not have a record of it, the ALJ should specifically ask claimant if she listed five work seeking activities on the paper form dated January 24, 2025, even if claimant does not recall what she specifically listed. If the record on remand fails to show the specific work-seeking activities (if any) that claimant performed during the week at issue, the ALJ should consider whether the absence of that information from the record is more likely the result of claimant’s failure to meet her burden of proof that she actually performed the required activities,³ or if it is instead the result of the Department’s failure to fully preserve documents relating to claimant’s eligibility for benefits.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary to consider all the issues before the ALJ. 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 to decide whether claimant actively sought work during the week at issue, Amended Order No. 25-UI-297326 is reversed and this matter remanded to the Office of Administrative Hearings for another hearing and order.

³ *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976) (where the Department has paid benefits, it has the burden to prove benefits should not have been paid; by logical extension of that principle, where benefits have not been, paid claimant has the burden to prove that the Department should have paid benefits).

DECISION: Amended Order No. 25-UI-297326 is set aside, and this matter remanded for further proceedings consistent with this order

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

DATE of Service: August 22, 2025

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Amended Order No. 25-UI-297326 or return this matter to EAB. Only a timely application for review of the order mailed to the parties after the remand hearing will return this matter to EAB.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.



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 باتباع 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

Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711

Email: appealsboard@employ.oregon.gov

Website: www.Oregon.gov/employ/pages/employment-appeals-board.aspx

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.