

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0447

Affirmed
Ineligible Week 21-25

PROCEDURAL HISTORY: On June 6, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not able to work and was therefore ineligible to receive unemployment insurance benefits effective May 18, 2025, and until the reason for the denial ended (decision # L0011035019). Claimant filed a timely request for hearing. On July 14, 2025, ALJ Murdock conducted a hearing at which the Department failed to appear, and on July 16, 2025, issued Order No. 25-UI-297718, modifying decision # L0011035019 by concluding that claimant was not able to work during the week of May 18, 2025 through May 24, 2025 (week 21-25) and was ineligible to receive benefits for that week. On July 24, 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) Claimant was employed by Walmart as a produce stocker during April and May 2025.

(2) Since 2023, claimant experienced back pain he attributed to working for his then-employer. On April 17, 2025, claimant began a period of leave due to this pain. On April 29, 2025, claimant underwent an MRI. After reviewing the results of the MRI, claimant's doctor advised that he remain off work through May 24, 2025, and that he could return to light work with lifting restrictions after that date. Claimant provided documentation of these recommendations to his employer, who allowed him to return to work with restrictions on May 25, 2025.

(3) On May 18, 2025, claimant filed an initial claim for unemployment insurance benefits, which the Department determined was monetarily valid. Claimant thereafter claimed benefits for the week of May 18, 2025 through May 24, 2025 (week 21-25). This is the week at issue. The Department did not pay

claimant benefits or allow waiting week credit for the week at issue. Claimant did not seek work during the week at issue because he intended to return to his job with Walmart when he was physically able to do so.

CONCLUSIONS AND REASONS: Claimant was unable to work during the week 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).

OAR 471-030-0036 (March 21, 2022) provides, in relevant part:

* * *

(2) For the purposes of ORS 657.155(1)(c), an individual shall be considered able to work in a particular week only if physically and mentally capable of performing the work the individual is actually seeking during all of the week except:

(a) An occasional and temporary disability for less than half of the week shall not result in a finding that the individual is unable to work for that week; and

(b) An individual with a permanent or long-term "physical or mental impairment" (as defined at 29 CFR 1630.2(h)) which prevents the individual from working full time or during particular shifts shall not be deemed unable to work solely on that basis so long as the individual remains available for some work.

* * *

Where the Department has paid benefits it has the burden to prove benefits should not have been paid. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976). 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.

Claimant was employed by Walmart during the week at issue but was on leave at the advice of his doctor. The period of leave began on April 17, 2025, and ended on May 24, 2025, as claimant's doctor advised that he was capable of performing light work after that date and his employer was willing to accommodate that restriction. Claimant testified that he underwent an MRI on April 29, 2025, and after his doctor reviewed the results a few weeks later and developed a treatment plan, the doctor provided documentation stating that he was "okay to go back to work" on May 25, 2025. Audio Record at 13:00, 16:20.

It is reasonable to infer from claimant being cleared by his doctor to perform light work beginning May 25, 2025, but having been on leave for more than a month prior to that date, that claimant was not capable of performing stocking work or any other type of work during the leave period, which included the week at issue. Moreover, claimant did not seek any type of work during the week, except for maintaining the employment relationship with Walmart so that he could eventually return to his stocking job when he was physically able to do so.

In his written argument, claimant did not dispute that he was incapable of working during the week at issue, but implied that the exception in OAR 471-030-0036(2) was applicable because he “was willing and able to work within the limits of [his] physical health, but temporarily unable to do so due to a verified medical condition.” Claimant’s Written Argument at 2. However, this exception did not apply because claimant’s temporary disability lasted for more than half of the week at issue, and even if claimant’s impairment was considered permanent or long-term, claimant did not remain available for “some work” during the week because he was incapable of performing *any* work that week. Accordingly, claimant was not physically able to perform any type of work during the week at issue and was therefore not able to work as required by ORS 657.155(1)(c).

For these reasons, claimant was not able to work during the week of May 18, 2025 through May 24, 2025 (week 21-25) and is ineligible to receive unemployment insurance benefits for that week.¹

DECISION: Order No. 25-UI-297718 is affirmed.

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

DATE of Service: August 29, 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.

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.

¹ Claimant may wish to inquire with the Department as to his eligibility for benefits through Paid Leave Oregon for weeks including the week at issue, if he has not done so already. This decision only denies unemployment insurance benefits.



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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