

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0719

Affirmed
Ineligible Weeks 33-25 through 44-25

PROCEDURAL HISTORY: On August 27, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was unavailable for work and therefore ineligible for benefits beginning August 10, 2025 (decision # L0012610294). Claimant filed a timely request for hearing. On November 4, 2025, ALJ Frank conducted a hearing, and on November 12, 2025 issued Order No. 25-UI-310279, modifying decision # L0012610294 by concluding that claimant was unavailable for work from August 10 through November 1, 2025 (weeks 33-25 through 44-25), and was ineligible for benefits for those weeks. On November 18, 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) On August 12, 2025, claimant filed an initial claim for benefits that the Department determined was monetarily valid. Claimant claimed benefits for the weeks of August 10 through November 1, 2025 (weeks 33-25 through 44-25). These are the weeks at issue. The Department did not pay benefits for the weeks at issue.

(2) Claimant is a Canadian citizen who, most recently prior to filing the initial claim, was admitted into the United States with a TN nonimmigrant visa classification that granted him authorization to work for a single employer, Microchip Technology, Inc. ("Microchip"). Claimant separated from employment with Microchip on August 4, 2025.

(3) Following the separation from Microchip, claimant was no longer authorized to work in the United States. However, he was permitted to remain in the country and seek other work. If offered work in a qualifying position, claimant could request a change in work authorization from Microchip to the

prospective employer, or could travel to Canada and immediately seek to re-enter the United States by requesting admission with a new TN classification and work authorization for the prospective employer.

(4) During the weeks at issue, claimant remained in the United States and sought work within the country.

CONCLUSIONS AND REASONS: Claimant was not available for work during 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).

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. . . every day of the week * * *.

* * *

OAR 471-030-0036(3) (March 21, 2022).

8 CFR 214.1(l)(2) provides: “An alien admitted or otherwise provided status in. . . TN classification and his or her dependents shall not be considered to have failed to maintain nonimmigrant status solely on the basis of a cessation of the employment on which the alien’s classification was based, for up to 60 consecutive days or until the end of the authorized validity period, whichever is shorter, once during each authorized validity period. DHS may eliminate or shorten this 60-day period as a matter of discretion. Unless otherwise authorized under 8 CFR 274a.12, the alien may not work during such a period.”¹

8 CFR 214.6(i) provides:

- (1) ***Filing at the service center.*** A citizen of Canada or Mexico admitted into the United States as a TN nonimmigrant who seeks to change or add a United States employer

¹ The exceptions in 8 CFR 274a.12 did not apply to claimant’s circumstances.

during the period of admission must have the new employer file a Form I-129 with appropriate supporting documentation, including a letter from the new employer describing the services to be performed, the time needed to render such services, and the terms of remuneration for services. Employment with a different or with an additional employer is not authorized prior to Department approval of the request.

(2) ***Readmission at the border.*** Nothing in paragraph (i)(1) of those section[s] precludes a citizen of Canada or Mexico from applying for readmission to the United States for the purpose of presenting documentation from a different or additional United States or foreign employer. Such documentation shall meet the requirements prescribed in paragraph (d) of this section. The fee prescribed under 8 CFR 106.2 shall be remitted by Canadian citizens upon admission to the United States pursuant to the terms and conditions of the USMCA. Citizens of Mexico may present documentation from a different or additional United States or foreign employer to a consular officer as evidence in support of a new nonimmigrant TN visa application.

* * *

20 CFR 604.5(f), relating to availability for work for purposes of unemployment insurance benefit eligibility, provides: “To be considered available for work in the United States for a week, the alien must be legally authorized to work that week in the United States by the appropriate agency of the United States government. In determining whether an alien is legally authorized to work in the United States, the State must follow the requirements of section 1137(d) of the SSA (42 U.S.C. 1320b-7(d)), which relate to verification of and determination of an alien's status.”

Claimant sought work in the United States during the weeks at issue, but was not a United States citizen or national. Claimant was admitted into the United States with a TN visa classification and was authorized to work only for Microchip. Under 8 CFR 214.1(l)(2), claimant was not permitted to work in the United States following cessation of that employment on August 4, 2025, even though he was permitted to remain in the country to seek other work. Because claimant was not permitted to work under federal law, 20 CFR 604.5(f) prohibits a finding of availability for work during the weeks at issue.

Claimant asserted, in essence, that work authorization could be quickly obtained for any employer willing to hire him, and lacking the authorization therefore posed little impediment to him accepting and reporting for work once a job offer was made. *See* Audio Record at 22:40. 8 CFR 214.6(i)(1) and (2) suggest that claimant likely could obtain authorization to work for a prospective employer within a relatively short time after a job offer was made. However, claimant would be legally prohibited from reporting for work between the time the job offer was made and the time the work authorization was granted, which, regardless of duration, fails to comport with OAR 471-030-0036(3)(b). Claimant also asserted that other states had paid him unemployment insurance benefits under similar circumstances at various times over the past fifteen years, suggesting that benefits should therefore be allowed on this claim. *See* Audio Record at 20:40. As the facts of each claim necessarily differ, as do the relevant statutes and implementing rules of each state, this argument is unpersuasive.

Accordingly, claimant was not available for work during the weeks of August 10 through November 1, 2025 (weeks 33-25 through 44-25) and is ineligible for benefits for those weeks.

DECISION: Order No. 25-UI-310279 is affirmed.

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

DATE of Service: December 23, 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 – 本判决会影响您的失业救济金。如果您不明白本判决, 请立即联系就业上诉委员会。如果您不同意此判决, 您可以按照该判决结尾所写的说明, 向俄勒冈州上诉法院提出司法复审申请。

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 naaiintindihan 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

Laotian

ເອົາໃຈໃສ່ – ຄຳຕັດສິນນີ້ມີຜົນກະທົບຕໍ່ກັບເງິນຊ່ວຍເຫຼືອການຫວ່າງງານຂອງທ່ານ. ຖ້າທ່ານບໍ່ເຂົ້າໃຈຄຳຕັດສິນນີ້, ກະລຸນາຕິດຕໍ່ຫາຄະນະກໍາມະການອຸທອນການຈ້າງງານໃນທັນທີ. ຖ້າທ່ານບໍ່ເຫັນດີນຄຳຕັດສິນນີ້, ທ່ານສາມາດຢືນຄໍາຮ້ອງຂໍການທີບທວນຄຳຕັດສິນນຳສານອຸທອນລັດ Oregon ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນຳທີ່ບອກໄວ້ຢ່າງເອົາໃຈໃສ່.

Arabic

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، اتصل بمجلس منازعات العمل فوراً، وإذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للمرجعية القانونية بمحكمة الاستئناف بأورغون و ذلك باتباع الإرشادات المدرجة أسفل القرار.

Farsi

توجه - این حکم بر مزایای بیکاری شما تاثیر می گذارد. اگر با این تصمیم موافق نیستید، بلا فاصله با هیأت فر جام خواهی استخدام تماس بگیرید. اگر از این حکم رضایت ندارید، می توانید با استفاده از دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اور گان در خواست تجدید نظر کنید.

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