

**EMPLOYMENT APPEALS BOARD DECISION**  
**2026-EAB-0009**

*Reversed*  
*Eligible Weeks 44-25 through 47-25*

**PROCEDURAL HISTORY:** On November 7, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work, and therefore was not eligible for unemployment insurance benefits, effective October 26, 2025 (decision # L0013887059). Claimant filed a timely request for hearing. On December 17, 2025, ALJ Parnell conducted a hearing at which the Department failed to appear, and on December 18, 2025 issued Order No. 25-UI-314818, modifying decision # L0013887059 by concluding that claimant was not available for work, and therefore not eligible for benefits, for the weeks of October 26, 2025 through November 22, 2025 (weeks 44-25 through 47-25). On December 26, 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 October 26, 2025, claimant filed an initial claim for unemployment insurance benefits. The Department determined that claimant's weekly benefit amount was \$528. Claimant subsequently claimed benefits for the weeks of October 26, 2025 through November 22, 2025 (weeks 44-25 through 47-25). These are the weeks at issue. The Department did not pay claimant

benefits for the weeks at issue.<sup>1</sup> Claimant reported earnings from employment for all of the weeks at issue except for the week of November 2, 2025 through November 8, 2025 (week 45-25).<sup>2</sup>

(2) In May 2024, claimant began a college dental assistant program. In October 2024, while still attending school, claimant began working for Amazon. Claimant continued this arrangement through October 2025. During that period, claimant was attending classes from 8:00 a.m. to 12:00 p.m. on Tuesdays, Wednesdays, and Thursdays, while working at Amazon from 9:00 p.m. to 6:30 a.m. between four and six days each week. On October 24, 2025, claimant took an educational leave of absence with Amazon because her grades had started to suffer as a result of working overnight shifts and then going immediately to school. Amazon had previously denied claimant's request to change her work schedule to one that would better suit her class schedule. Claimant could have transitioned to a "flex time" schedule with Amazon, which would have allowed her to pick up shifts when they became available. Audio Record at 19:25. However, claimant chose not to do this because such a schedule did not offer a guarantee of any particular hours.

(3) After taking educational leave with Amazon, claimant began working in other short-term or contract positions while continuing her schoolwork.

(4) During the weeks at issue, claimant sought work in foodservice, in which she had significant previous experience; warehouse work; work with a semiconductor company; and other miscellaneous positions through staffing agencies. Claimant had the option of picking up occasional shifts with Amazon during that time, but instead chose to work for other employers. During the weeks at issue, claimant was willing to work any hours that did not directly conflict with or were immediately adjacent to her class hours, and would have, for instance, accepted a full-time schedule working from 3 p.m. to 11 p.m. or similar.

**CONCLUSIONS AND REASONS:** Claimant was available for work during the weeks 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

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<sup>1</sup> 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.

<sup>2</sup> 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.

(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) (March 21, 2022).

However, 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).

During the weeks at issue, claimant was attending school, and was unable or unwilling to work shifts that directly conflicted with or were immediately adjacent to her class schedule. The order under review concluded that this rendered claimant unavailable for work during the weeks at issue, explaining:

Thus, because claimant voluntarily went on educational leave with Amazon, instead of transitioning to "flex time" work to accept shifts that better suited her schedule, she substantially reduced an opportunity to return to suitable work as quickly as possible. Furthermore, claimant was unable to work during her schooling schedule, which was 8:00 a.m. to 12:00 p.m. on Tuesday, Wednesday, and Thursday. While her schooling was certainly a great opportunity for her personally, in order to be eligible for unemployment insurance benefits, claimants must be willing to work full time, part time, and temporary work opportunities, during all of the usual hours and days of the week customary for the work being sought. The types of positions claimant sought would customarily be performed during timeframes when claimant would be in school.

Order No. 25-UI-314818 at 3. The record does not support these conclusions. As to the former point about claimant not accepting "flex time" shifts, the record does not show what shifts, if any, could have been offered or would actually have been available to claimant during the weeks at issue had she chosen such a schedule. By contrast, however, the record *does* show that claimant was working for other employers for most or all of the weeks at issue, including the week immediately following when she took leave from Amazon. This shows that claimant's decision not to accept "flex time" shifts did not actually substantially reduce her opportunity to return to work as quickly as possible. Instead, it suggests that claimant had already obtained other employment by the time she took her educational leave, and chose to work in that employment instead of accepting a "flex time" schedule. Thus, claimant's decision

to accept other work instead of accepting a “flex time” schedule with Amazon did not render her unavailable for work.

Additionally, the order under review failed to consider the exception to OAR 471-030-0036(3)(a) under OAR 471-030-0036(4). This exception allows an individual to restrict their availability due to circumstances such as “attendance in school or training to improve their job skills or long-term employment opportunities,” so long as the work they are seeking is customarily performed during other days and hours in their normal labor market area that they are willing and capable of working full time during other days and hours for which they could reasonably expect employers to schedule them. Claimant sought various types of work during the weeks at issue, including in food service, which the record suggests is the type of work in which she had the most prior experience.

Claimant was willing to work full time in shifts from 3:00 p.m. to 11:00 p.m. or similar. The Department neither appeared at the hearing nor offered any other evidence into the record regarding the usual hours and days customary for the type(s) of work claimant was seeking during the weeks at issue. Given the record shows that claimant was indeed working some shifts during the weeks in question, it is plausible that the work she sought, such as food service, was customarily performed during these hours. Therefore, the preponderance of the evidence shows that claimant was seeking work that was customarily performed during hours and days in which she was willing to work and could reasonably expect employers to schedule her for. As such, the exception under OAR 471-030-0036(4) applies.

For the above reasons, claimant was available for work during the weeks at issue, and is therefore eligible for benefits for those weeks, if otherwise qualified.

**DECISION:** Order No. 25-UI-314818 is set aside, as outlined above.

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

**DATE of Service:** January 30, 2026

**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.

**Employment Appeals Board - 875 Union Street NE | Salem, OR 97311**

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