

**EMPLOYMENT APPEALS BOARD DECISION**  
**2026-EAB-0087**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On December 30, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work and therefore was denied unemployment insurance benefits beginning the week of November 9 through November 15, 2025 (week 46-25) until November 7, 2026 (decision # L0014937925). Claimant filed a timely request for hearing. On January 15, 2026, ALJ Griffith conducted a hearing at which the Department failed to appear, and on January 20, 2026, issued Order No. 26-UI-317462, modifying decision # L0014937925 by concluding that claimant was not eligible for benefits for the weeks of November 9 through December 27, 2025 (weeks 46-25 through 52-25), but was eligible for benefits for the weeks of December 28, 2025 through January 10, 2026 (weeks 53-25 and 01-26).<sup>1</sup> On January 26, 2026, 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.

The parties may offer new information into evidence at the remand hearing, such as the information contained in claimant's written argument that was not part of the hearing record. At that time, the ALJ will determine if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing about documents they wish to have considered at the

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<sup>1</sup> The "Order" section of the order under review stated as follows: "The administrative decision mailed December 30, 2025 is affirmed in part, and set aside in part. Claimant is not eligible to receive benefits for the period November 9, 2025 through January 10, 2026 [benefit weeks 46-25 through 52-25]. However, claimant is eligible to receive benefits for the period December 28, 2025 through January 10, 2026 [benefit weeks 1-26 through 2-26]." Order No. 26-UI-317462 at 3 (brackets in original). The foregoing contains errors in that the period of November 9, 2025 through January 10, 2026 are weeks 46-25 through 01-26, and the period of December 28, 2025 through January 10, 2026 are weeks 53-25 through 01-26. These are presumed to be scrivener's errors, and Order No. 26-UI-317462 is presumed to have intended to convey that decision # L0014937925 was modified to reflect that the weeks of ineligibility were weeks 46-25 through 52-25 and the weeks of eligibility were weeks 53-25 and 01-26.

hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties before the hearing at their addresses on the certificate of mailing for the notice of hearing.

**FINDINGS OF FACT:** (1) For a period beginning some time before April 2025, Samaritan Health (“Samaritan”) employed claimant.

(2) Claimant had anxiety, depression, and one or more conditions that caused her to rapidly lose a significant amount of weight. On October 13, 2025, Samaritan placed claimant on a type of leave of absence called “ADA block” leave. Audio Record at 5:44. ADA block leave was different from a medical leave of absence, but was based upon claimant’s anxiety and depression conditions and possibly also the condition or conditions that caused claimant’s weight loss.

(3) On or about November 9, 2025, claimant filed an initial claim for unemployment insurance benefits.

(4) On November 12, 2025, claimant’s ADA block leave ended. On November 14, 2025, Samaritan placed claimant on “per diem” leave, a type of leave that the employer referred to as a “place holder,” which allowed claimant to remain an employee but in which claimant was not able to work or pick up any shifts. Audio Record at 9:45, 10:35.

(5) In the week of November 9 through November 15, 2025 (week 46-25), the first week of claimant’s per diem leave, claimant’s anxiety and depression started to improve such that she felt she could work. At that time, claimant’s doctor and therapist both told claimant that it was “okay that [she] seek other work,” and neither professional said that claimant “couldn’t work . . . as an absolute.” Audio Record at 6:47. However, claimant had a follow-up appointment with either her doctor or her therapist scheduled for December 26, 2025, and claimant was on a wait list to be seen sooner, if possible.

(6) When claimant went on per diem leave, she remained in contact with Samaritan and “did not mind” returning to her job, but did not receive any work from them. Audio Record at 12:32. Samaritan did not ask claimant for a medical release to return to work when they placed her on per diem leave.

(7) On December 29, 2025, Samaritan ended claimant’s employment.

(8) Claimant claimed benefits for the week of November 9, 2025 through January 10, 2026 (weeks 46-25 through 01-26). These are the weeks at issue. The Department did not pay claimant for the weeks at issue.

**CONCLUSIONS AND REASONS:** Order No. 26-UI-317462 is set aside, and this matter remanded for further proceedings consistent with this order.

To be eligible to receive benefits, among other eligibility criteria, unemployed individuals must be able to work and available for 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 \* \* \*.

\* \* \*

(e) However, 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 unavailable for work solely on that basis so long as the individual remains available for some work.

\* \* \*

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

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).

The order under review concluded that claimant was ineligible for benefits for weeks 46-25 through 52-25, but was eligible for benefits for weeks 53-25 and 01-25. Order No. 26-UI-317462 at 3. In so concluding, the order drew a distinction between the weeks claimed while claimant was on per diem leave but still employed by Samaritan—November 14 through December 29, 2025, which corresponded roughly to weeks 46-25 through 52-25—versus the weeks claimed after Samaritan ended claimant's employment—December 29, 2025 and thereafter, which corresponded roughly to weeks 53-25 through 01-26. Order No. 26-UI-317462 at 3. Citing only to a provision of OAR 471-030-0036 that relates to the able to work requirement, the order concluded that for the former weeks, claimant was not unemployed, able, or available for work, but that for the latter weeks, claimant was unemployed, able, and available for work. Order No. 26-UI-317462 at 2-3.

The order applied the wrong legal standard, placing an unnecessary focus on whether claimant was employed by Samaritan during the weeks claimed. The order also erred by conflating the available for work and able to work analyses. Additionally, the record was not sufficiently developed to determine, under the correct standards, whether claimant was available for work and able to work during the weeks at issue. Remand is warranted for these reasons.

As an initial matter, the focus of review in this case is whether claimant was available for work and able to work during the weeks at issue. This is so because the administrative decision in this case, decision # L0014937925, was explicitly premised on the available to work requirement. The administrative decision also implicated the able to work requirement, as it mentioned that claimant was not released to work due to mental or medical health issues.<sup>2</sup> The standards for assessing whether an individual is available for work or able to work are contained separately in OAR 471-030-0036. Though some aspects of those standards may overlap, it is required that separate available for work and able to work analyses be conducted on a week-by-week basis for all the weeks at issue.

Furthermore, claimant's status as an employee of Samaritan for most of the weeks at issue is of limited relevance to whether she was available for work and able to work for each of the weeks claimed. Whether an individual is deemed "unemployed" is determined under ORS 657.100, and typically arises where a claimant works full-time hours or their earnings exceed their weekly benefit amount in a given week, such that they would be ineligible to receive benefits for the week because they are not considered an "unemployed individual" under ORS 657.155(1). Whether someone is ineligible to receive benefits because they are not an "unemployed individual" is a concept that is distinct from the available to work and able to work requirements. Of course, a claimant's status as employed and working full-time hours may well be relevant to whether they are available for work since, for example, it may tend to show that they are not willing to accept work opportunities because they are preoccupied with their work for their employer. Here, however, the fact that claimant was employer-attached to Samaritan during most of the weeks at issue is of limited significance because she was on per diem leave, rather than working. The dispositive tests for determining whether claimant was available for work or able to work during the weeks at issue are the standards contained in OAR 471-030-0036, not whether claimant was employed by Samaritan.

On remand, the ALJ should first develop the record on certain background details and ask follow-up questions regarding matters that were touched upon at hearing but not developed sufficiently. To this end, the ALJ should inquire as follows:

- The ALJ should inquire when claimant started working for Samaritan and what claimant's job for Samaritan was. The ALJ should ask questions to develop what the one or more conditions were that caused claimant to lose weight rapidly and clarify whether those conditions were a basis for her ADA block leave, in addition to her anxiety and depression. The ALJ should ask when claimant was diagnosed with anxiety, depression, and the one or more other conditions.
- The ALJ should ask questions to confirm if claimant's doctor and therapist restricted claimant from working to enable claimant to receive the ADA block leave from October 13 through November 12, 2025. The ALJ should ask whether claimant was restricted from working by her doctor and therapist when she transitioned to per diem leave on November 14, 2025. If claimant was restricted from working by her doctor and therapist upon being placed on per diem leave, the ALJ should inquire why claimant did not take the initiative to obtain her medical release to return to work from her doctor and therapist, provide that documentation to Samaritan, and ask Samaritan to schedule her for work shifts.

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<sup>2</sup> Specifically, decision # L0014937925 stated, "Based on this information, we have decided that you were not available to work[ ]" and also stated, "You are not able to meet this requirement because you are on a leave of absence with your regular employer and are not released to work by your doctor due to mental/medical health issues."

- The ALJ should inquire whether, during her per diem leave, claimant ever asked for any work in her position from Samaritan; if not, why not; and if so, what Samaritan's response was. The ALJ should ask whether, during her per diem leave, claimant ever asked for any work from Samaritan in jobs other than her position; if not, why not; and, if so, what Samaritan's response was. The ALJ should also inquire about what work claimant sought during the weeks at issue from prospective employers other than Samaritan.
- Claimant testified that during her per diem leave her doctor and therapist told her that it was "okay that [she] seek other work," and neither professional said that claimant "couldn't work . . . as an absolute." Audio Record at 6:47. In light of this, the ALJ should inquire whether claimant's doctor or therapist ever stated that claimant could only work within certain parameters during her per diem leave, even if they had not imposed any absolute type of work restriction, and, if so, what those parameters were. The ALJ should inquire about claimant's follow-up appointment with either her doctor or her therapist scheduled for December 26, 2025. If claimant's anxiety and depression started to improve such that she felt she could work starting the week of November 9 through November 15, 2025, the ALJ should ask claimant to clarify why she had an appointment on December 26, 2025, and what the purpose of the appointment was.

Next, the ALJ should develop the record regarding whether claimant was available for work during the weeks at issue by asking questions tailored to the provisions contained in OAR 471-030-0036(3). To this end, the ALJ should ask claimant whether she was willing to work full time, part time, and to accept temporary work opportunities during all the usual hours and days of the week customary for the work she sought during the weeks at issue. This will require the ALJ to develop the record as to what type of work claimant sought during each of the weeks at issue, and the usual hours and days customary for that work, which is information that may be accessible in claimant's profile on Frances Online (or from a Department witness, if one appears for the hearing). The ALJ should ask questions to develop whether, during each of the weeks at issue, claimant was capable of accepting and reporting for any suitable work opportunities within the labor market in which claimant sought work. This will require the ALJ to develop the record as to the labor market in which claimant sought work, which is information that may be accessible in claimant's profile on Frances Online. The ALJ should ask questions to develop whether, during each of the weeks at issue, claimant imposed any conditions that substantially reduced her opportunities to return to work. The ALJ should also ask questions to develop whether, during each of the weeks at issue, claimant was physically present in her normal labor market area every day of the week, unless she was actively seeking work outside of her normal labor market or was infrequently absent from her normal labor market area for less than half of the week. This will require the ALJ to develop the record as to what claimant's normal labor market area was, which is information that may be accessible in claimant's profile on Frances Online.

In addition, given that claimant had anxiety and depression, as well as one or more other conditions, the ALJ should develop the record to assess whether during the weeks at issue, under OAR 471-030-0036(3)(e), claimant had a permanent or long-term physical or mental impairment that prevented her from working full time or during particular shifts. And, if so, whether claimant remained available for some work, notwithstanding her physical or mental impairment.

Finally, the ALJ should develop the record regarding whether claimant was able to work during the weeks at issue by asking questions tailored to the provisions contained in OAR 471-030-0036(2). To this

end, the ALJ should ask questions to develop whether, during each of the weeks at issue, claimant was physically and mentally capable of performing the work she actually sought during all of the week. This will require the ALJ to develop the record as to what work claimant actually sought during each of the weeks at issue. Given that claimant had anxiety and depression, as well as one or more other conditions, the ALJ should also ask questions to determine whether, during the weeks at issue, claimant had a permanent or long-term physical or mental impairment that prevented her from working full time or during particular shifts, and if so, whether claimant remained available for some work despite the impairment.

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 was available for work and able to work during the weeks at issue, Order No. 26-UI-317462 is reversed and this matter remanded to the Office of Administrative Hearings for another hearing and order.

**DECISION:** Order No. 26-UI-317462 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:** March 12, 2026

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 26-UI-317462 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.

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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**

ទោរទៅ – តម្រូវការនេះមិនមែនជាភារកិច្ចរបស់លោកអ្នកទេ បើសិនជាលោកអ្នកមិនបានបំពេញតម្រូវការនេះទេ។ បើលោកអ្នកមិនបានបំពេញតម្រូវការនេះទេ លោកអ្នកអាចប្តឹងសុំឲ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

**Arabic**

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**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، می توانید با استفاده از دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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