

**EMPLOYMENT APPEALS BOARD DECISION**  
**2026-EAB-0117**

*Reversed*  
*Ineligible Weeks 47-25 through 48-25*

**PROCEDURAL HISTORY:** On November 26, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work during the weeks of November 16 through 29, 2025 (weeks 47-25 through 48-25), and therefore was ineligible to receive unemployment insurance benefits for those weeks (decision # L0014353146). Claimant filed a timely request for hearing. On January 22, 2026, ALJ Scott conducted a hearing, and on January 26, 2026 issued Order No. 26-UI-318117, reversing decision # L0014353146 by concluding that claimant was available for work during weeks 47-25 through 48-25, and therefore was eligible for benefits for those weeks. On February 4, 2026, the Department filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) On October 14, 2025, claimant filed an initial claim for unemployment insurance benefits. Claimant subsequently claimed benefits for the weeks of November 16 through 29, 2025 (weeks 47-25 through 48-25). These are the weeks at issue. The Department did not pay claimant benefits for the weeks at issue.

(2) On Saturday, November 15, 2025, claimant traveled from his home in Oregon to France. Claimant continued to travel abroad in France and Switzerland until he returned home at approximately 5:30 p.m. on Friday, November 28, 2025.

(3) Claimant customarily performed work as a business analyst or in similar roles, and was seeking such work during the weeks at issue. At that time, claimant had been working in such roles fully remotely for several years, and was only seeking work that could be performed fully remotely. The Department determined that claimant's labor market for such work was Lake Oswego, Portland, Clackamas, Oregon City, Tualatin, and Beaverton, Oregon.

(4) During the weeks at issue, while traveling, claimant carried two electronic devices with him on which he could send and receive communications relating to his search for remote work.

(5) Neither France nor Switzerland are part of the Compact of Free Association with the United States of America. During the weeks at issue, claimant was not the spouse or domestic partner of an individual stationed at a military base or embassy located outside the United States.

**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). 657.155(2) states:

(a) An individual who leaves the individual’s normal labor market area for the major portion of any week is presumed to be unavailable for work within the meaning of this section.

(b) The presumption described in paragraph (a) of this subsection may be overcome if the individual establishes to the satisfaction of the director that the individual:

(A) Has conducted a bona fide search for work and has been reasonably accessible to suitable work in the labor market area in which the individual spent the major portion of the week to which the presumption applies; or

(B) Was required to be outside the individual’s normal labor market area to apply for suitable employment within the individual’s normal labor market.

For an individual to be considered “available for work” for purposes of ORS 657.155(1)(c), they must be:

\* \* \*

(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 as defined by section (6) of this rule,<sup>1</sup> every day of the week, unless:

(A) The individual is actively seeking work outside his or her normal labor market area; or

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<sup>1</sup> Under OAR 471-030-0036(6)(a), “An individual’s normal labor market shall be the geographic area surrounding the individual’s permanent residence within which employees in similar circumstances are generally willing to commute to seek and accept the same type of work at a comparable wage. The geographic area shall be defined by employees of the Employment Department, based on criteria set forth in this section[.]”

(B) The individual is infrequently absent from the normal labor market area for reasons unrelated to work search, for less than half of the week, and no opportunity to work or referral to work was missed by such absence.

\* \* \*

(i) An individual is not available for work in any week claimed under ORS 657.155 if the individual resides or spends the major portion of the week:

(A) In Canada unless the individual is authorized to work in Canada;

(B) In a country not included in the Compact of Free Association with the United States of America; or

(C) outside of the United States, District of Columbia or any territory or political division that is directly overseen by the United States federal government; except,

(i) If the individual is the spouse or domestic partner of an individual stationed at a military base or embassy located outside the United States;

(ii) Job opportunities exist on the military base or embassy for family members of those stationed there;

(iii) The individual lives within a reasonable commuting distance to job opportunities at the military base or embassy; and

(iv) The individual is willing to accept the conditions and terms of the available employment provided they are not inconsistent with ORS 657.195.

\* \* \*

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

During the majority of each of the weeks at issue, claimant was traveling abroad in either France or Switzerland, both of which are countries that are not included in the Compact of Free Association with the United States of America. Claimant was not the spouse or domestic partner of an individual stationed at a military base or embassy located outside the United States. As such, because claimant spent the majority of each of the weeks at issue outside the United States and did not meet any of the exceptions under OAR 471-030-0036(3)(i), claimant was not available for work during the weeks at issue under that provision of the rule.

Despite this, the order under review concluded that claimant was available for work during the weeks at issue. Order No. 26-UI-318117 at 4. In so concluding, the order under review explained, in relevant part, that claimant met his burden to rebut the statutory presumption of unavailability under ORS 657.155(2);

that a rule of statutory construction requires that when a provision in a statute conflicts with a provision in an administrative rule, the statute must be applied prior to the application of the rule; and therefore that, because claimant met his burden to rebut the presumption under ORS 657.155(2), the provisions under OAR 471-030-0036(3)(i) “is not reached and is not to be considered.” Order No. 26-UI-318117 at 4. This conclusion is not supported by substantial reason.

As a preliminary matter, there is no conflict between the provisions of ORS 657.155(2) and OAR 471-030-0036(3)(i). The former provides that the presumption of unavailability when an individual spends the majority of a week outside their normal labor market may be overcome if the individual makes the required showing. The latter requires a finding that an individual be determined unavailable for work when they have spent the majority of a week outside the country, unless they meet one of several exceptions under that provision of the rule. However, ORS 657.155(2) does not state that overcoming the presumption under that section is sufficient to determine that an individual is available for work where the basis for deeming the individual unavailable is their absence from the country for the major portion of the week under OAR 471-030-0036(3)(i). Instead, it merely allows the individual to overcome ineligibility due to being unavailable for work for leaving one’s normal labor market area, a basis for being unavailable for work that is independent of and distinct from unavailability due to being out of the country. Thus, regardless of whether claimant overcame the presumption under ORS 657.155(2), the record still requires a conclusion under OAR 471-030-0036(3)(i) that claimant was not available for work.

That said, claimant also failed to meet his burden to show that he was available for work under either ORS 657.155(2) or OAR 471-030-0036(3)(d).<sup>2</sup> For claimant to have overcome the presumption under ORS 657.155(2), he must have shown, by a preponderance of the evidence, that he had either conducted a bona fide search for work, and was reasonably accessible to suitable work in the labor market area in which he spent the major portion of the week; or was required to be outside his normal labor market to apply for suitable employment within his normal labor market. As to the former, claimant did not show that he was both seeking work located in the labor markets he was visiting (France and Switzerland), and that would have been reasonably accessible to suitable work in those labor markets. He likewise did not show that he was required to be in either country so that he could apply for a job in his normal labor market.

Similarly, to meet the exceptions under OAR 471-030-0036(3)(d), claimant was required to have either been actively seeking work located outside his normal labor market (i.e., Lake Oswego and surrounding cities), or absent from his normal labor market for less than half the week. Claimant did not show that he was seeking work outside of his normal labor market, and was outside of that labor market for more than half of each of the weeks at issue. Accordingly, claimant was not available for work under the provisions of either ORS 657.155(2) or OAR 471-030-0036(3)(d).

Finally, the record suggests that claimant was not available for work because he did not meet the requirements under OAR 471-030-0036(3)(b) and (c). The record shows that claimant had worked fully-remote jobs for the several years preceding the weeks at issue, and that he was, during the weeks at

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<sup>2</sup> 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. As the Department did not pay claimant benefits for the weeks at issue, claimant bears the burden of proof in this matter to show that he was available for work during the weeks at issue.

issue, only seeking jobs which were fully remote. From these facts, it can be inferred that claimant was only willing to accept fully-remote jobs. However, the record does not show that the *type* of work that claimant was seeking was exclusively performed remotely, even if the specific positions for which claimant was applying were all fully remote. OAR 471-030-0036(3)(b) requires that claimant be capable of accepting and reporting for any suitable work opportunities *within the labor market in which work is being sought*. It contains no exception which allows for an individual to only report remotely to work within their labor market. It can also be reasonably inferred that claimant could not have reported to work in-person during the weeks at issue because, for the majority of those weeks, he was outside of the country. Thus, because claimant did not show that he was, during the weeks at issue, capable of reporting in-person to jobs within his labor market, he did not meet the availability requirement under OAR 471-030-0036(3)(b).

Similarly, because the record does not show that the type of work that claimant was seeking is exclusively performed remotely, the fact that claimant was, more likely than not, only willing to accept fully remote work constitutes a condition which substantially reduces his opportunity to return to work at the earliest possible time. As such, claimant did not meet his burden to show that he was available for work under OAR 471-030-0036(3)(c).

For the above reasons, claimant was not available for work during weeks 47-25 through 48-25, and therefore was not eligible for unemployment insurance benefits for those weeks.

**DECISION:** Order No. 26-UI-318117 is set aside, as outlined above.

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

**DATE of Service:** March 19, 2026

**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 ໄດ້ ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

**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 الإستئناف 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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