

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0200

Modified
Ineligible Weeks 52-25 through 01-26
Reversed and Remanded

PROCEDURAL HISTORY: On January 21, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work during the weeks of December 21, 2025 through January 10, 2026 (weeks 52-25 through 01-26), and therefore was not eligible for unemployment insurance benefits for those weeks; and that because claimant had been paid benefits for those weeks for which he was not eligible, he was assessed an overpayment of \$2,616 that he was required to repay to the Department (decision # L0015556745). Claimant filed a timely request for hearing. On February 23, 2026, ALJ Bender conducted a hearing, for which the Department provided a written statement called an Attestation instead of having a witness attend the hearing. The overpayment issue was not addressed at hearing. On March 2, 2026, ALJ Bender issued Order No. 26-UI-322015, affirming decision # L0015556745 by concluding that claimant was not available to work for the weeks at issue. On March 19, 2026, claimant filed an application for review with the Employment Appeals Board (EAB).

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence, which is necessary to complete the record under OAR 471-041-0090(1)(a), consists of the Department's Attestation, which has been marked as EAB Exhibit 1 and provided to the parties with this decision.¹ Any party that objects to EAB taking notice of this information must send their objection to EAB in writing, saying 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 exhibit will remain in the record.

WRITTEN ARGUMENT: EAB considered claimant's written argument in reaching this decision.

¹ The ALJ excluded the Attestation on the basis that claimant had not received it prior to the hearing. Audio Record at 6:35 to 7:30. However, the Department indicated on the Attestation that a copy was mailed to claimant at his address of record on February 13, 2026. EAB Exhibit 1 at 1. Therefore, regardless of the fact that claimant had not received it prior to the hearing, the Department complied with the requirements of OAR 471-040-0023(4) (August 1, 2004), and admitting the document into the record is proper.

FINDINGS OF FACT: (1) On November 12, 2025, claimant filed an initial application for benefits. Claimant subsequently claimed benefits for the weeks of December 21, 2025 through January 10, 2026 (weeks 52-25 through 01-26). These are the weeks at issue.

(2) Claimant lived in Redmond, Oregon. The Department determined that claimant’s labor market was the “Bend to Redmond OR area.” EAB Exhibit 1 at 3.

(3) Prior to filing his initial claim, claimant had worked as the creative director of a creative agency for several years. Before being laid off from that job, claimant worked fully remote for that employer.

(4) On December 19, 2025, claimant left Redmond to travel to Arkansas and Missouri to visit relatives. On January 11, 2026, claimant returned to Redmond. On December 28, 2025, claimant indicated on his weekly claim that he had been away from his permanent residence for more than three days during the preceding week. On December 29, 2025, the Department requested more information from claimant about the matter. Claimant responded the same day and reported the details of his travel plans.

(5) During the weeks at issue, claimant sought work as a creative director or similar, and applied for remote jobs with employers located in various states.

(6) On January 21, 2026, the Department served notice decision # L0015556745, which both concluded that claimant was not available for work during the weeks at issue; and that he had been overpaid benefits for those weeks and was required to repay the amount of \$2,616 to the Department. After claimant filed a timely request for hearing, the Office of Administrative Hearings (OAH) issued a notice of hearing which identified the issue to be considered at hearing as the following, in relevant part: “Was claimant unemployed, registered for work, able to work, available for work, and actively seeking and unable to obtain suitable work?”² The notice of hearing did not indicate that the issue of overpaid benefits would be addressed at hearing. At hearing, the ALJ did not address the issue of overpaid benefits, and no evidence was offered into the record regarding that issue. Order No. 26-UI-322015, likewise, did not address the issue of overpaid benefits.

(7) A post-hearing review of records in claimant’s Frances Online account showed that claimant was not paid benefits for the weeks at issue. Despite this, other records within claimant’s account indicate that he was paid benefits for the weeks at issue. Additionally, on March 24, 2026, a Department representative entered a comment into claimant’s account which stated, in relevant part: “Adv clmnt of OAH Phone number to get more information on their appeal. Adv clmnt of [Benefit Payment Control’s] phone number to potentially set up a repayment plan that does not reduce their payments to zero every week.”³

² EAB has taken notice of these facts, which are 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 facts will remain in the record.

³ EAB has taken notice of these facts, which are 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 facts will remain in the record.

CONCLUSIONS AND REASONS: Claimant was not available for work during the weeks at issue. Order No. 26-UI-322015 is set aside and this matter remanded for further development of the record regarding whether claimant was overpaid benefits for the weeks at issue.

Actively Seeking Work. 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:

* * *

(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

* * *

(d) Physically present in the normal labor market area. . . every day of the week * * *.

* * *

ORS 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.

OAR 471-030-0036(3) (March 21, 2022). An individual meets the physical presence requirement of OAR 471-030-0036(3)(d) only if they are in their normal labor market area every day of the week, unless:

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

(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.

An individual's normal labor market area is "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," as defined by employees of the Department based on these criteria. OAR 471-030-0036(6)(a).

At issue in this matter is, first, whether claimant was outside of his normal labor market for the weeks at issue, such that he would be considered not available for work during those weeks. A key dispute in this issue is how the concept of claimant's "normal labor market area" is applied. While acknowledging the definition of that term under OAR 471-030-0036(6)(a), claimant suggested in his written argument that "defaulting to a literal, geographical reading of OAR 471-030-0036(3)(c) in this specific instance inadvertently contradicts the statutory protections regarding 'suitable work' under ORS 657.190, creating a logical impossibility for a modern professional;" and that, because his work is "entirely digital, [his] labor market is not tethered to physical storefronts... [and] travels with [him]." Claimant's Written Argument at 1–2. While claimant's apparent frustration with the limitations of the rule is understandable, the wording of the rule itself is unambiguous, and does not support the reading that claimant asserts.

The language of OAR 471-030-0036(6)(a) specifically and explicitly refers to a geographical region as the basis for an individual's normal labor market, and contains no language that could reasonably be construed to mean that a labor market may "travel" with an individual. Irrespective of the fact that claimant previously performed remote work, EAB must make its determination on this issue based on the law as it is written, rather than how claimant would prefer it was written. Moreover, under the rule an individual's normal labor market is defined by employees of the Department. Thus, because the Department determined that the claimant's normal labor market was the Bend and Redmond areas, his availability for work during the weeks at issue must be considered in light of that fact.

The record shows that claimant was away from his residence from December 19, 2025 through January 11, 2026, a period which encompasses the entirety of all three of the weeks at issue. Thus, unless the record shows that claimant met one of the exceptions under either ORS 657.155(2)(b) or OAR 471-030-0036(3)(d), he cannot be considered available for work during those weeks. The record does not show, by a preponderance of the evidence, that claimant met any of these exceptions.⁴

As to the exceptions under ORS 657.155(2), while the record shows that claimant spent time seeking remote work while he was traveling, it does not show that he sought work that was *located* in the areas he was visiting. In fact, claimant's testimony at hearing indicated that he was not seeking work in those areas, explaining, "The roles I qualify for are highly specialized and predominantly remote. Applying for temporary retail or physical labor at local businesses in the towns I visited... would not meet the definition of 'suitable work' [under ORS 657.190]." Audio Record at 34:20. Claimant's explanation here appears to suggest that, because he believed that there was no work in the areas he visited that

⁴ 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 explained in the following section, it is not clear from the record as developed whether claimant was paid benefits for the weeks at issue, such that he would bear the burden of proof. Regardless, even if the Department bore the burden of proof in this matter, the record as developed is sufficient to show that claimant's circumstances do not qualify for any of the exceptions discussed here.

would be suitable for him under the provisions of ORS 657.190,⁵ claimant could qualify for the exemption under ORS 657.155(2)(b)(A) without actually *seeking* such work in the areas he visited. Because claimant did not seek work in the actual labor markets he was visiting he cannot avail himself of the exception under that provision.

Likewise, the record does not show that claimant was required to be outside of his normal labor market for the purposes of applying for employment *within* his normal labor market (such as for a job interview conducted in a different state than the one where the actual job is located), and therefore does not qualify for the exception under ORS 657.155(2)(b)(B). Claimant similarly does not qualify for the exception under OAR 471-030-0036(3)(d)(A), as he did not show by a preponderance of the evidence that he could have accepted and reported for work opportunities within any of the labor markets in which he sought work. Finally, because claimant was away from his normal labor market for the entirety of each of the weeks at issue, OAR 471-030-0036(3)(d)(B) does not apply to his circumstances.

In sum, claimant was outside of his normal labor market for all of the weeks at issue, and none of the exceptions under ORS 657.155(2) or OAR 471-030-0036(3)(d) apply to his circumstances. As such, claimant was not available for work during the weeks at issue, and therefore was not eligible for unemployment insurance benefits for those weeks.

Overpayment. A claimant who was overpaid benefits because of an error not caused by the claimant's false statement, misrepresentation of a material fact or failure to disclose a material fact, or because an initial decision to pay benefits is later reversed by a decision finding the individual is not eligible for the benefits, must have the amount deducted from future benefits otherwise payable to them. An overpayment may only be deducted from any future benefits the claimant is eligible to receive within the five years after the decision concluding there was an overpayment becomes final. ORS 657.315(1)(a).

As explained above, the record as developed is sufficient to determine that claimant was not eligible for benefits for the weeks at issue. However, despite the fact that claimant filed a request for hearing on decision # L0015556745, which both denied claimant benefits for the weeks at issue *and* indicated that it had assessed an overpayment of \$2,616 for those weeks, the overpayment issue was not noticed for hearing nor addressed at hearing. Nonetheless, and despite the Department's attestation that claimant was not paid benefits for the weeks at issue, Department records indicate the Department may have taken action to collect the overpayment by reducing benefits paid to claimant other weeks. Therefore, due process requires that this matter be remanded for a hearing on the overpayment matter.

On remand, the ALJ should inquire as to whether claimant was actually paid benefits for the weeks at issue; if so, why claimant was paid before the Department ultimately determined that he was not eligible for benefits for those weeks, and what led to the eventual reversal; whether an overpayment was actually

⁵ ORS 657.190 states, "In determining whether any work is suitable for an individual, the Director of the Employment Department shall consider, among other factors, the degree of risk involved to the health, safety and morals of the individual, the physical fitness and prior training, experience and prior earnings of the individual, the length of unemployment and prospects for securing local work in the customary occupation of the individual and the distance of the available work from the residence of the individual." This is, arguably, a more expansive definition of "suitable work" than the narrow reading that claimant appeared to advance. Regardless, because the suitability of any work that might have been available to claimant is not directly at issue in this matter, EAB takes no position as to whether any particular positions might have been suitable to claimant.

applied to claimant's account; and, if so, what collection efforts, if any, the Department engaged in to recoup the overpayment.

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 assessed an overpayment for the weeks at issue and, if so, whether he is liable to repay it, Order No. 26-UI-322015 is reversed and this matter remanded to the Office of Administrative Hearings for another hearing and order.

DECISION: Order No. 26-UI-322015 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: April 30, 2026

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 26-UI-322015 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.

NOTE: If paying back your overpayment would be a financial hardship, you may request an overpayment waiver. The Department may forgive the debt and stop collection efforts if you meet certain requirements. If you apply for a waiver but do not qualify for the waiver, other relief may be available. Other relief may include a temporary pause in collection efforts or a limit on how much your current benefits may be reduced due to the overpayment. It is important to apply for a waiver as soon as possible because waivers are not retroactive. This means that if the Department grants the waiver, you will not receive a refund of payments you have already made on the overpayment.

The Overpayment Waiver Application is available for download at <https://unemployment.oregon.gov/uploads/docs/FORM129-EN.pdf>

For more information on requesting a waiver go to <https://unemployment.oregon.gov/overpayments>.

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.



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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El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.