

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0424

Affirmed

*Ineligible Weeks 48-25 through 02-26 and Weeks 04-26 through 10-26
Liable for \$11,336 Overpayment to be Deducted from Future Benefits Payable*

PROCEDURAL HISTORY: On March 18, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work or therefore eligible for benefits beginning the week of November 23, 2025 (week 48-25), and that claimant had received \$11,336 in benefits to which he was not entitled and must repay (decision # L0016549259). Claimant filed a timely request for hearing. On April 10, 2026, ALJ Wahl conducted a hearing, and on April 14, 2026, issued Order No. 26-UI-326979, which did not address the \$11,336 overpayment, but otherwise modified decision # L0016549259 by concluding that claimant was not available for work for the weeks from November 23, 2025 through March 14, 2026 (weeks 48-25 through 10-26) and was not eligible for benefits for those weeks. On May 1, 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 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 the parts of claimant's argument that were based on the hearing record.

FINDINGS OF FACT: (1) On November 12, 2025, claimant started attending piloting school part-time. Shortly thereafter, on November 19, 2025, claimant transitioned to full-time attendance. The full-time school attendance limited the days and hours claimant was available for work. Under the full-time school schedule, claimant was available for work on Mondays and Tuesdays from 3:00 p.m. to 8:00 p.m. and on Thursdays, Saturdays, and Sundays from 2:00 p.m. to 8:00 p.m. Claimant paid \$30,000 in tuition for piloting school, and was committed to attending full-time once he transitioned into full-time attendance.

(2) On November 17, 2025, claimant filed an initial claim for regular unemployment insurance benefits. When he did so, he stated on the initial claim form that he was in school. There exists a special

unemployment insurance program offered to dislocated workers called Training Unemployment Insurance (TUI). TUI enables a claimant to attend full-time school or an accredited training program while receiving unemployment insurance benefits, but without the usual requirement of having to be available for work. Participation in the TUI program typically requires a claimant to fill out a TUI application form, which claimant did not do at the time he filed his initial claim because he was unaware of the TUI program. Although claimant stated on the initial claim form that he was in school, the Department did not immediately place claimant in the TUI program or assess his candidacy for the program. From time to time thereafter, claimant stated in communications with the Department via Frances Online that he was attending school. However, the Department continued to take no immediate action to place claimant in the TUI program.

(3) The Department determined that claimant had a monetarily valid claim for benefits with a first effective week of November 16, 2025. Claimant's weekly benefit amount was \$872.¹ Claimant claimed benefits for the weeks of November 23, 2025 through January 17, 2026 and January 25 through March 14, 2026 (weeks 48-25 through 02-26 and 04-26 through 10-26). These are the weeks at issue.

(4) Claimant sought retail sales clerk work during the weeks at issue. Claimant's labor market area was the Santa Cruz, California area, and retail sales clerk work was customarily performed in claimant's labor market all days from 7:00 a.m. to 10:00 p.m.

(5) The Department did not pay claimant for the week of November 23 to 29, 2025 (week 48-25) or the week of February 1 to 7, 2026 (week 05-26), for reasons unrelated to claimant's work availability. The Department paid claimant benefits for the weeks from November 30, 2025 through January 17, 2026 (weeks 49-25 through 02-26), the week of January 25 to January 31, 2026 (week 04-26), and the weeks from February 8, 2026 through March 14, 2026 (weeks 06-26 through 10-26).

(6) On claimant's claim forms for the weeks at issue, he was asked each week if he had been capable of accepting and reporting for full-time, part-time and temporary work. Claimant answered affirmatively to the question each week, even though his school attendance limited the days and hours he was available to work. Had he answered the question in the negative for weeks 49-25 through 02-26, 04-26, and 06-26 through 10-26, the Department would not have paid claimant benefits. However, had claimant been placed in the TUI program in the first place, he would not have been subject to the available for work requirement, and his available for work status would not have affected his eligibility for benefits for weeks 49-25 through 02-26, 04-26, and 06-26 through 10-26.

(7) On March 14, 2026, the Department determined that claimant was approved for the TUI program. At that time, claimant spoke with an adjudicator and they told him, "This is the program you're supposed to be in." Audio Record at 20:56.

(8) On March 18, 2026, the Department issued decision # L0016549259. In addition to concluding that claimant was not available for work and therefore ineligible for benefits for the weeks at issue, decision # L0016549259 concluded that claimant had received \$11,336 in benefits to which he was not entitled

¹ 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.

for weeks 49-25 through 02-26, 04-26, and 06-26 through 10-26, and must repay. When claimant requested a hearing on decision # L0016549259, the issue of the overpayment was not included in the hearing notice and the ALJ did not specifically address it at hearing, although evidence relevant to the issue was elicited by the ALJ. Order No. 26-UI-326979 did not address the overpayment issue.²

CONCLUSIONS AND REASONS: Claimant was not available for work during the weeks at issue and is ineligible for benefits for those weeks. Claimant is liable for an overpayment of \$11,336 in benefits. Because the Department was at fault for the overpayment, claimant is required to repay the overpayment to the Department by deduction from future benefits payable only.

Available for Work. The Department did not pay claimant benefits for weeks 48-25 and 05-26, but did pay claimant benefits for the weeks of 49-25 through 02-26, 04-26, and 06-26 through 10-26. Therefore, claimant has the burden to prove that the Department should have paid benefits for weeks 48-25 and 05-26, but the Department has the burden to prove that claimant should not have been paid benefits for the weeks of 49-25 through 02-26, 04-26, and 06-26 through 10-26. *See Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

To be eligible to receive benefits, unemployed individuals must be 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:

* * *

(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[.]

* * *

OAR 471-030-0036(3) (March 25, 2022). However, OAR 471-030-0036(4) provides:

(4) 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.

² EAB has taken notice of the facts contained in this paragraph, 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.

Claimant was not available for work during the weeks at issue. Under OAR 471-030-0036(3)(b), claimant was not capable of accepting and reporting for any suitable work opportunities because the retail sales clerk work he sought in his Santa Cruz, California labor market was customarily performed all days from 7:00 a.m. to 10:00 p.m. Claimant, however, was only available for work on Mondays and Tuesdays from 3:00 p.m. to 8:00 p.m. and on Thursdays, Saturdays, and Sundays from 2:00 p.m. to 8:00 p.m.

Further, because claimant was only available for work on Mondays and Tuesdays from 3:00 p.m. to 8:00 p.m. and on Thursdays, Saturdays, and Sundays from 2:00 p.m. to 8:00 p.m., he was not willing and capable of working full time during other days and hours for which he could reasonably expect employers to schedule him under OAR 471-030-0036(4). At most, claimant's availability would accommodate him working 28 per week by working on Mondays and Tuesdays (five hours per day) and Thursdays, Saturdays, and Sundays (six hours per day). As full-time work is typically regarded as working 40 hours per week,³ working 28 hours per week does not constitute full-time work, so under claimant's limited availability, he was not capable of working full time during other days and hours for which he could expect employers to schedule him. For these reasons, claimant was not available for work during the weeks at issue, and was not eligible to receive 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).

Because claimant was not available for work and therefore was ineligible for benefits for the weeks at issue, the weeks for which he was paid, 49-25 through 02-26, 04-26, and 06-26 through 10-26, were weeks for which he received benefits to which he was not entitled. Specifically, claimant received \$872 for each of those weeks, for a total overpayment of \$11,336.

However, the overpayment was not the result of claimant making a false statement or misrepresentation, but rather, was because of an error committed by the agency. This is the case because in his initial claim and on several occasions thereafter, claimant advised that he was attending school, but the Department did not immediately place him in the TUI program or assess his candidacy for the program. On March 14, 2026, after claimant had received the \$11,336 overpayment, the Department approved him for the program and an adjudicator made a statement to claimant suggesting that the TUI program was the program claimant was supposed to have been placed in from the start. If the Department had done so, claimant would not have been subject to the available for work requirement, would not have been deemed ineligible for benefits for the weeks at issue on that basis, and the \$11,336 in benefits received would not have been considered an overpayment. Thus, claimant is liable for the \$11,336 overpayment, but per ORS 657.315, the overpayment may only be deducted from future benefits payable.

³ See OAR 471-030-0022 (January 11, 2018) ("Full-time work,' for the purposes of ORS 657.100, is 40 hours of work in a week except in those industries, trades or professions in which most employers due to custom, practice, or agreement utilize a normal work week of more or less than 40 hours in a week.").

Unfortunately, when claimant requested a hearing on decision # L0016549259, the issue of the overpayment was not included in the hearing notice and the ALJ did not specifically address it at hearing. Therefore, while EAB is taking the initiative to address the issue now, claimant may object to EAB doing so, and request a remand to have issue properly noticed and specifically addressed at hearing. Claimant may do so by sending any such objection to EAB in writing, stating why they object, within ten days of EAB mailing this decision.

Note that because of the existence of the \$11,336 overpayment and its being subject to repayment by deduction from future benefits payable, should claimant claim benefits after the issuance of this decision, the Department may offset that week of benefits against claimant's outstanding overpayment. This may have the practical outcome of claimant not receiving benefits for future weeks claimed until the \$11,336 overpayment is fully repaid by such deductions. Department records show that claimant has requested waiver of recovery of the overpayment on two occasions, and that both requests were denied by the Department.⁴ Claimant may wish to pursue appealing those decisions or filing late requests for hearing on one or both of them, as applicable.

For the reasons set forth above, claimant was not available for work and therefore ineligible for benefits for weeks 48-25 through 02-26 and weeks 04-26 through 10-26. Claimant received \$11,336 in benefits for which he was not entitled and is liable to repay the overpayment by deduction from future benefits payable only.

DECISION: Order No. 26-UI-326979 is affirmed.

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

DATE of Service: June 12, 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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⁴ 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.



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 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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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.