

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0546

Modified
Late Request for Hearing Allowed
Eligible Weeks 45-25 through 47-25 and 08-26 through 18-26

PROCEDURAL HISTORY: On December 24, 2025, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not able to work during the weeks of October 12, 2025 through October 31, 2026 (weeks 42-25 through 43-26), and therefore was not eligible to receive unemployment insurance benefits for those weeks (decision # L0014860947).¹ On January 13, 2026, decision # L0014860947 became final without claimant having filed a request for hearing. On March 3, 2026, claimant filed a late request for hearing on decision # L0014860947.

ALJ Kangas considered claimant's request, and on April 9, 2026 issued Order No. 26-UI-326584, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by April 23, 2026. On April 17, 2026, claimant filed a timely response to the appellant questionnaire. On May 15, 2026, ALJ Griffith conducted a hearing at which the Department failed to appear. On May 18, 2026, ALJ Griffith issued Order No. 26-UI-330549, allowing claimant's late request for hearing on decision # L0014860947; and modifying that decision by concluding that claimant was not able to work during the weeks of November 2 through 22, 2025 (weeks 45-25 through 47-25) and therefore not eligible for benefits for those weeks, but was able to work for the weeks of February 22, 2026 through May 9, 2026 (weeks 08-26 through 18-26) and therefore was eligible for benefits for those weeks. On May 26, 2026, claimant filed an application for review of Order No. 26-UI-330549 with the Employment Appeals Board (EAB).

PARTIAL ADOPTION: EAB considered the entire hearing record, including witness testimony and any exhibits admitted as evidence. EAB agrees with the part of Order No. 26-UI-330549 allowing

¹ The period of ineligibility stated in decision # L0014860947 appears to be in error, as claimant did not file his initial claim until November 2, 2025, and did not claim benefits for any week prior to that date. Further, because ability to work is determined as to each week claimed, the period of ineligibility cannot end on a definite future date. As such, decision # L0014860947 should have stated that claimant was ineligible for benefits effective November 2, 2025 and until the reason for the denial ended.

claimant's late request for hearing on decision # L0014860947. That part of Order No. 26-UI-330549 is **adopted**. See ORS 657.275(2).

FINDINGS OF FACT: (1) On or around November 2, 2025, claimant filed an initial claim for unemployment insurance benefits. Claimant subsequently claimed benefits for the weeks of November 2 through 22, 2025 (weeks 45-25 through 47-25) and February 22, 2026 through May 9, 2026 (weeks 08-26 through 18-26). These are the weeks at issue. The Department did not pay claimant benefits for the weeks at issue.

(2) In or around late 2023, during the winter holiday season, claimant's brother died. Thereafter, as a result, claimant's mental health tended to worsen during the holiday season each year.

(3) At the time that he filed his initial claim in early November 2025, claimant was seeking work and intended to return to work. As the holiday season drew closer, however, claimant became worried that he would again have difficulties stemming from grief for his late brother. Thus, claimant sought admission to an inpatient substance-abuse treatment program to help support him through that period.

(4) Claimant was initially unable to find a treatment program in Oregon that would accept him and that he could afford. In or around late November 2025, claimant visited family in Mexico. While there, his family helped him to find an inpatient treatment program in Guadalajara that would accept him. On December 1, 2025, claimant entered the treatment program. Claimant had not expected to find such a program during his visit to Mexico. Further, claimant was not aware, prior to his admission into the program, that he would not be permitted any type of outside contact while in treatment. As such, claimant did not make arrangements for anyone to manage his mail or other affairs while he was in treatment.

(5) On February 16, 2026, claimant completed his treatment program. He returned to Oregon shortly thereafter.

CONCLUSIONS AND REASONS: Claimant was able to 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). 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. OAR 471-030-0036(2) (March 21, 2022).

The order under review concluded that claimant was not able to work during the first three weeks at issue (weeks 45-25 through 47-25), but was able to work during the remaining weeks at issue (weeks 08-26 through 18-26). Order No. 26-UI-330549 at 5. In fact, the record shows that claimant was able to work during all of the weeks at issue.

In supporting its conclusion that claimant was not able to work during weeks 45-25 through 47-25, the order under review explained:

Although claimant testified that he was mentally and physically capable of working in November 2025, he conversely claimed he did not possess the ability to arrange for someone to process his mail or pay his bills before leaving for rehab. Since I have credited his testimony that he was so lacking in executive functioning ability he was unable to arrange for someone to read his mail before leaving the country, I cannot credit testimony that claimant was, contemporaneously, able to work. I therefore conclude claimant was not mentally and physically able to work in November 2025.

Order No. 26-UI-330549 at 5. The above explanation is not supported by the record. Claimant testified at hearing that he was physically and mentally capable of working during weeks 45-25 through 47-25.² Audio Record at 43:44. While claimant *did* testify, in so many words, that he had been unable to arrange for someone to handle his mail and other affairs while he was in the treatment program, the suggestion that he did so because he was “so lacking in executive functioning ability” lacks any evidentiary basis. Rather, claimant testified that he failed to make such arrangements prior to entering the program because he had not been expecting to find such a program during his visit to Mexico, and likewise was not aware that he would not be allowed outside contact until after he had entered treatment. *See* Audio Record at 35:55 to 39:00. At worst, this shows that claimant suffered from a lack of foresight in late November or early December 2025. It is not sufficient to show that, for the first three weeks of November 2025, claimant was physically or mentally incapable of working.

Similarly, the fact that claimant was concerned about his mental health and in search of a substance-abuse treatment program does not, by itself, show that he was not able to work during weeks 45-25 through 47-25. Claimant did not give a detailed description of the circumstances which led him to seek a treatment program. It is not, for instance, clear, if claimant was actively using substances during November 2025, or if he merely feared a relapse during that time in anticipation of difficult feelings that might arise during the holiday season. Thus, the record shows only that during weeks 45-25 through 47-25 claimant expected that he might need help to either avoid or quit using substances during the upcoming holiday season, which is not equivalent to a showing that claimant was at that time either incapacitated or otherwise incapable of performing work during those weeks.

In sum, claimant unequivocally testified that he was capable of working during all of the weeks at issue, and the record does not contain sufficient evidence to contradict this assertion. As such, claimant met his burden to show that he was able to work during the weeks at issue.³ Claimant therefore was eligible for benefits for the weeks at issue, if otherwise eligible.

DECISION: Order No. 26-UI-330549 is modified, as outlined above.

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

² Claimant also testified that he was mentally and physically capable of working during weeks 08-26 through 18-26. Audio Record at 47:15 to 49:12. Because the order under review correctly concluded that claimant was able to work during these weeks, however, further discussion of claimant’s eligibility for those weeks is not necessary.

³ 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.

DATE of Service: July 8, 2026

NOTE: This decision reverses the ALJ's order denying claimant benefits during weeks 45-25 through 47-25. 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

Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711

Email: appealsboard@employ.oregon.gov

Website: www.Oregon.gov/employ/pages/employment-appeals-board.aspx

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