EO: Intrastate
BYE: 29-May-2027

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

573
AAA 005.00

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0843

Reversed & Remanded

PROCEDURAL HISTORY: On July 23, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was denied unemployment insurance benefits beginning May 31, 2026 because she was not able to work (decision # L0018921918). Claimant filed a timely request for hearing. On August 12, 2026, ALJ Franco conducted a hearing at which the Department failed to appear, and on August 20, 2026 issued Order No. 26-UI-337867, modifying decision # L0018921918 by concluding that claimant was not able to work and therefore ineligible for benefits from May 31 through August 1, 2026 (weeks 22-26 through 30-26).[1] On September 9, 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.

The parties may offer new information, such as the documents enclosed with claimant's written argument, into evidence at the remand hearing. 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 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) Prior to January 2026, claimant worked as a barber. This work regularly required claimant to stand for long periods of time with infrequent breaks, and to lift heavy boxes of supplies. Claimant had been performing this type of work for approximately 20 years.

[1] Although Order No. 26-UI-337867 stated it affirmed decision # L0018921918, it modified that decision by changing the dates of ineligibility to a defined period. Order No. 26-UI-337867 at 3. Additionally, while the order under review concluded that claimant was denied benefits from June 1, 2026 through August 1, 2026, it should have stated that claimant was denied benefits from May 31, 2026 through August 1, 2026, as benefit denials begin on the Sunday of the effective week.

(2) In January 2026, claimant had a complete hysterectomy that resulted in persistent genitourinary bleeding. In April 2026, claimant had surgery to correct inguinal hernias, which worsened the bleeding issue. Claimant's doctor therefore ordered that claimant remain off of work to avoid claimant straining herself further by standing for long periods of time or lifting heavy objects. As such, claimant was unable to return to work as a barber beginning January 2026.

(3) On June 1, 2026, claimant filed an initial claim for unemployment insurance benefits. Claimant claimed benefits for the weeks of May 31, 2026 through August 1, 2026 (weeks 22-26 through 30-26). These are the weeks at issue. The Department did not pay claimant benefits for the weeks at issue.

(4) On June 4, 2026, claimant's doctor wrote a letter indicating that claimant was still unable to work due to her ongoing health issues.

(5) During the weeks at issue, claimant sought work that would not require her to lift heavily or be on her feet, such as office work, and as an art teacher at a local museum.

CONCLUSIONS AND REASONS: Order No. 26-UI-337867 is set aside and this matter remanded for further development of the record.

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, 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)(b) (March 21, 2022).

The order under review concluded that claimant was not able to work during the weeks at issue because "claimant's physician stated claimant is precluded from working and ha[s] not released claimant to work." Order No. 26-UI-337867 at 3. The record as developed does not show that claimant was not able to work during the weeks at issue.

While claimant's medical issues, and the above statement from her doctor, are both relevant to whether claimant was able to work as defined by OAR 471-030-0036(2)(b), they are not conclusive. The record shows that claimant was unable to return to her former role as a barber because she could not stand for long periods of time or lift heavy objects, both of which were required in that role. However, the record also shows that claimant had been seeking less physically-demanding work such as office work, and work as an art teacher at a local museum, during the weeks at issue.

OAR 471-030-0036(2) determines an individual's ability to work based on whether they are physically and mentally capable of performing the work they are actually seeking during any given week. Thus, on remand, the ALJ should inquire as to whether, for each of the weeks at issue, claimant was physically and mentally capable of performing the work she was seeking during those weeks. Because eligibility under OAR 471-030-0036 must be determined for each week claimed, the ALJ should confirm whether claimant's ability to perform the work she was seeking changed at any point during the weeks at issue,

or whether her overall ability (or inability) to perform that work remained the same for the entire two-month period at issue.

Additionally, the record suggests that claimant may have had some limitations on how much work she could perform each week. However, it is unclear from the record as developed whether she faced any limitations on how much she could work each week based on her medical issues, as opposed to some other reason, such as if claimant simply preferred to limit the amount of work she performed each week. Given that claimant has been suffering from these medical issues since at least January 2026, the ALJ should confirm whether claimant is limited in how much she can work each week specifically due to these medical issues; and, if so, whether any such limitations fall within the exception under OAR 471-030-0036(2)(b) for permanent or long-term physical or mental impairments. To this end, the ALJ should ask questions to develop whether claimant was 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), and, if so, whether claimant remained available for some work.

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 able to work during the weeks at issue, Order No. 26-UI-337867 is reversed and this matter remanded to the Office of Administrative Hearings for another hearing and order.

DECISION: Order No. 26-UI-337867 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: October 23, 2026

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 26-UI-337867 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 – 本判决会影响您的失业救济金。 如果您不明白本判决， 请立即联系就业上诉委员会。 如果您不同意此判决，您可以按照该判决结尾所写的说明，向俄勒冈州上诉法院提出司法复审申请。

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 فورا، 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 دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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