EO: Intrastate
BYE: 19-Jun-2027

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

323
AAA 005.00

EMPLOYMENT APPEALS BOARD DECISION
2026-EAB-0888

Reversed & Remanded

PROCEDURAL HISTORY: On August 26, 2026, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work and therefore not eligible for unemployment insurance benefits beginning June 21, 2026 (decision # L0019375131). Claimant filed a timely request for hearing. On September 14, 2026, ALJ Murray conducted a hearing at which the Department failed to appear, and on September 17, 2026 issued Order No. 26-UI-340033, modifying decision # L0019375131 by concluding that claimant was not available to work during the weeks from June 21 through August 29, 2026 (weeks 25-26 through 34-26) and therefore was not eligible for benefits for those weeks. On September 21, 2026, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant did not state that she provided a copy of her argument to the employer as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also 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 as required by OAR 471-041-0090 (May 13, 2019). EAB considered only the information received into evidence at the hearing. *See* ORS 657.275(2).

The parties may offer new information, such as the new information in 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.[1]

FINDINGS OF FACT: (1) Claimant worked for the employer as a receptionist until March 13, 2026.

[1] Claimant is advised that the requirement to provide copies of proposed exhibits to the other parties (here, the employer) applies regardless of whether the other parties participate in the proceedings. *See* OAR 471-040-0023(4) (August 1, 2004).

(2) On June 23, 2026, claimant filed an initial claim for unemployment insurance benefits. The Department established claimant's weekly benefit amount at $806. Claimant subsequently claimed benefits for the weeks from June 21 through August 29, 2026 (weeks 25-26 through 34-26). These are the weeks at issue. The Department did not pay claimant benefits for the weeks at issue.

(3) Claimant has an infant, for whom she is the primary caretaker during weekdays, as claimant's partner works outside the home on weekdays. During the times when claimant's partner was working during the weeks at issue, claimant had no other options for childcare, as she had no friends or family in the area who could watch the child, and was not able to afford any available childcare options. Claimant and her partner also shared a vehicle.

(4) During the weeks at issue, claimant's work searches were for positions such as receptionist, front desk worker, medical billing, and insurance verification. Claimant sought this work primarily in the Bend, Oregon area, but also sought work in Portland, Oregon and other areas of the state. Claimant's intent was to obtain work that she could perform remotely during weekdays, so that she could stay home with her child. Claimant could not have accepted in-person work during the times when she was home watching her child, but could have accepted at least part-time work in the evenings when her partner was home. Claimant was not willing to relocate to accept work outside of the area in which she resided.

CONCLUSIONS AND REASONS: Order No. 26-UI-340033 is reversed, and this matter remanded for further development of the record.

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

> (a) Willing to work full time, part time, and accept temporary work opportunities, during all of the usual hours and days of the week customary for the work being sought, unless such part time or temporary opportunities would substantially interfere with return to the individual's regular employment; and
>
> (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[.]
>
> * * *

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

However, 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.

OAR 471-030-0036(4).

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. OAR 471-030-0036(6)(a).

At issue in this matter is whether claimant was available for work during the weeks at issue, in light of her restrictions due to a lack of childcare while her partner was at work. During those weeks, claimant's work searches were for positions such as receptionist, front desk worker, medical billing, and insurance verification. Based on this, the order under review concluded that claimant was not available for work during the weeks at issue, explaining that the exception under OAR 471-030-0036(4) did not apply because "the work claimant was seeking did not typically have full-time hours outside her partner's workday such that he could provide childcare." Order No. 26-UI-340033 at 4. The record as developed does not support this conclusion.

To be considered available for work, claimant must have been, in relevant part, willing to work during all of the usual hours and days of the week customary for the work being sought, and capable of accepting and reporting for any suitable work opportunities within the labor market in which work is being sought, subject to the exception under OAR 471-030-0036(4). Thus, in order to determine whether claimant was available for work, it is necessary to assess what claimant's labor market was. However, such a finding cannot be made without evidence from the Department.

OAR 471-030-0036(6)(a) requires that "[t]he geographic area shall be defined by employees of the Employment Department, based on criteria set forth in" that provision of the rule. As such, it is not sufficient for the ALJ to broadly define claimant's labor market based on where claimant resides or was seeking work; that definition must be made by a representative of the Department. On remand, the Department should provide a representative to offer such testimony, or an attestation in lieu of their attendance at the remand hearing, and the ALJ should make findings on claimant's labor market based on this evidence.

Likewise, whether claimant was available for work does not depend on whether claimant could report for work during the hours in which the individual employers with whom she had been applying scheduled such work. Instead, the relevant inquiry under OAR 471-030-0036(3)(a) is whether claimant could have reported for work during all of the usual hours and days of the week *customary for the work being sought*—i.e., what hours and days the *type* of work being sought is typically performed—in

claimant's labor market. Therefore, the ALJ should inquire of the Department representative when the types of work claimant was seeking were customarily performed in her labor market, as determined by the Department. This should, in particular, include whether the work that claimant was seeking, or was willing to seek, was customarily performed in claimant's labor market during times other than those when claimant did not have any childcare available, so as to determine whether the exception under OAR 471-030-0036(4) applies. Finally, to that end, the ALJ should also further develop the record as to the specific hours and days during which claimant was not available to leave the house due to a lack of childcare or transportation.

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 available for work during the weeks at issue, Order No. 26-UI-340033 is reversed and this matter remanded to the Office of Administrative Hearings for another hearing and order.

DECISION: Order No. 26-UI-340033 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: November 6, 2026

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 26-UI-340033 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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