

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1807

*Hearing Decision 14-UI-28991 Affirmed*  
*Hearing Decision 14-UI-28993 Modified*  
*Ineligible - Weeks 29-13 through 34-13*

**PROCEDURAL HISTORY:** On September 19, 2014, the Oregon Employment Department (the Department) served two notices of two administrative decisions, one concluding claimant did not timely file continued claims for benefits for the weeks July 14 through August 24, 2013 (weeks 29-13 through 34-13) (decision # 122548) and the other concluding claimant was not able to work during the weeks July 14 through August 24, 2013 (weeks 29-13 through 34-13) (decision # 125233). On September 22, 2014, claimant filed a timely request for hearing regarding decision #122548. On October 2, 2014, OAH issued notice of a hearing scheduled for October 20, 2014. On October 20, 2014, ALJ Murdock issued Hearing Decision 14-UI-27204, dismissing claimant's request for hearing for failure to appear. On October 23, 2014, claimant filed a request to reopen the hearing on decision # 122548 that included both a statement explaining why claimant failed to appear at the hearing and a request for hearing regarding decision # 125233. On November 10, 2014, OAH issued notice of a consolidated hearing regarding claimant's request to reopen and decision # 125233 that it scheduled for November 19, 2014. On November 19, 2014, ALJ Kirkwood conducted the consolidated hearing, and on November 19, 2009, issued Hearing Decision 14-UI-28991, allowing claimant's request to reopen, cancelling Hearing Decision 14-UI-27204 but affirming decision # 122548, and Hearing Decision 14-UI-28993, allowing claimant's late request for hearing on decision # 125233, but affirming that decision. On November 24, 2014, claimant filed applications for review of Hearing Decisions 14-UI-28991 and 14-UI-28993 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 14-UI-28991 and 14-UI-28993. For case-tracking purposes, this decision is being issued in duplicate (Employment Appeals Board Decisions 2014-EAB-1807 and 2014-EAB-1809).

No adversely affected party requested review of the portion of Hearing Decision 14-UI-28991 concluding claimant showed good cause for failing to appear at the October 20, 2014 hearing. We therefore confined our decision regarding that case to the issue of whether the continued claims at issue were timely filed.

No adversely affected party requested review of the portion of Hearing Decision 14-UI-28993 concluding claimant showed good cause for her late request for hearing regarding decision # 125233. We therefore confined our decision regarding that case to the issue of whether claimant was able to work during the weeks at issue.

**FINDINGS OF FACT:** (1) On July 17, 2011, claimant was assaulted by her husband who inflicted a head injury on claimant that substantially impaired her cognition and memory thereafter.

(2) On September 11, 2012, claimant filed an initial claim for unemployment insurance benefits.

(3) During the period July 14, 2013 through August 24, 2013, claimant applied for work, participated in job interviews and was able to perform basic cleaning work on a part-time basis.

(4) On August 27, 2014, claimant contacted the Department by telephone and filed continued claims for benefits for each of the weeks July 14, 2013 through August 24, 2013 (weeks 29-13 through 34-13), the weeks at issue.

**CONCLUSIONS AND REASONS:** We agree with the ALJ in part. Claimant is ineligible for benefits for weeks 29-13 through 34-13 because she did not timely file her continued claims in accordance with the Department's rules. However, we disagree that claimant was not able to work during those weeks.

**Timely Filing of Continued Claims.** ORS 657.155(1)(b) provides that an unemployed individual shall be eligible to receive benefits for any week only if the individual filed a claim for such benefits in accordance with regulations prescribed by the Department. ORS 657.260(1). OAR 471-030-0045(2)(February 23, 2014) requires a claimant "in order to obtain benefits" for any given week to file a "continued claim" for that week. A "continued claim" is one that "certifies...to the claimant's status" during the week claimed. OAR 471-030-0045(1). An individual must file a continued claim no later than seven days following the end of the week for which benefits are claimed for it to be timely. OAR 471-030-0045(4). The individual may file the claims in person at any Employment Department office in Oregon, by mail, by fax, by internet, or by telephone. OAR 471-030-0045(3). The party seeking relief has the burden of persuasion. *See, Porter v. Riverdale School Dist. No. 51 JT*, 21 Or.App. 773. 536 P.2d 1265 (1975).

To be timely, claimant had to file each of the claims at issue no later than seven days following the end of the week for which the benefits were claimed. It was undisputed that claimant filed each of the claims at issue on August 27, 2014, approximately one year after the end of each of the weeks claimed. Accordingly, none of the claims were timely filed. Claimant testified at hearing that she did not file her continued claims for benefits in a timely manner due to the effects of her head injury. Transcript at 34. However, under the current rule,<sup>1</sup> there is no good cause exception to the requirement that an individual

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<sup>1</sup> Even under the rule in effect during the weeks at issue, rather than at the time the benefits were claimed, claimant's continued claims would have been untimely. During July and August 2013, OAR 471-030-0045(4) provided, in relevant part, that a "continued claim" was required to be filed within *24 days* following the end of the week claimed, except the filing deadline could be extended *seven days* upon a showing of "good cause." Thus, even if claimant's impairments constituted good cause for the late claims filings, the claims were still untimely because they each were filed more than 31 days after the end of the week for which the benefits were claimed.

file continued claims no later than seven days following the week for which benefits are claimed. Therefore, under OAR 471-030-0045(4), claimant is not eligible for unemployment insurance benefits for the weeks at issue.

**Able to Work.** To be eligible to receive benefits, unemployed individuals must be able to work during each week claimed. ORS 657.155(1)(c). An individual must meet certain minimum requirements to be considered “able to work” for purposes of ORS 657.155(1)(c). Under OAR 471-030-0036(2)(January 8, 2006), an individual with a permanent or long-term “physical or mental impairment” (as defined at 29 CFR 1630.2(h) which prevents the individual from working full time or during particular shifts shall not be deemed unable to work or unavailable to work solely on that basis so long as the individual remains available for some work.

The Department did not dispute that claimant suffered from a permanent or long-term physical or mental impairment following the infliction of her head injury in July 2011. In Hearing Decision 14-UI-28993, after finding that claimant worked part time in February 2013 and believed she could work, searched for work, filed job applications and participated in job interviews for work during the weeks at issue, the ALJ concluded claimant was not able to work, reasoning,

Claimant has a permanent or long-term impairment related to her head injury. Although claimant was willing to try and work, both her doctor and the technicians at vocational rehabilitation told her she could not work.

Hearing Decision 14-UI-28993 at 2, 3. However, claimant testified at hearing that her doctors only told her “it wasn’t a good idea” to work and she believed she could perform at least some janitorial work because she had young children at home and was able to perform the necessary cleaning functions there. Transcript at 23, 24. Viewing the record as a whole, claimant established that during the weeks at issue she was able to perform at least “some” work and was not ineligible for benefits because she was not able to work under ORS 657.155(1)(c).

To summarize, during the period July 14, 2013 through August 24, 2013, claimant was able to work under ORS 657.155(1)(c). However, because she did not timely file her continued claims for benefits for the weeks (weeks 29-13 through 34-13), she is not eligible for benefits.

**DECISION:** Hearing Decision 14-UI-28991 is affirmed. Hearing Decision 14-UI-28993 is modified as outlined above.

Susan Rossiter and Tony Corcoran;  
J. S. Cromwell, not participating.

**DATE of Service: January 8, 2015**

**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 listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the website at [court.oregon.gov](http://court.oregon.gov). Once on the website, click on the blue tab for “Materials and Resources.” On the next screen, click on the tab that reads “Appellate Case Info.” On

the next screen, select “Appellate Court Forms” from the left panel. On the next page, select the forms and instructions for the type of Petition for Judicial Review that you want to file.

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