

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-1014**

*Affirmed*  
*Ineligible Weeks 14-20 through 49-20*

**PROCEDURAL HISTORY:** On July 14, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant filed late claims for unemployment insurance benefits for the weeks from March 29, 2020 through December 5, 2020 (weeks 14-20 through 49-20) and therefore was not entitled to benefits for those weeks (decision # 133013). Claimant filed a timely request for hearing. On August 18, 2021, ALJ Wyatt conducted a hearing, and on August 19, 2021 issued Order No. 21-UI-172995, affirming decision # 133013. On August 24, 2021, claimant filed an application for review with the Employment Appeals Board (EAB). On October 1, 2021, EAB issued EAB Decision 2021-EAB-0690, reversing Order No. 21-UI-172995 and remanding the matter for further development of the record to determine whether claimant was eligible for backdating of her initial regular claim and, if so, whether she timely filed continued claims for regular benefits for the weeks at issue in Order No. 21-UI-172995. On October 20, 2021, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for November 9, 2021 at 10:45 a.m. On November 9, 2021, ALJ Frank conducted a hearing, and on November 15, 2021 issued Order No. 21-UI-179690,<sup>1</sup> re-affirming decision # 133013. On November 28, 2021, claimant filed a timely application for review of Order No. 21-UI-179690 with 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 when reaching this decision. EAB considered claimant's argument to the extent it was based on the record.

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<sup>1</sup> On November 15, 2021, OAH also issued Order No. 21-UI-179692, which appears to be materially identical to Order No. 21-UI-179690. The issuance of the duplicate order is presumed to be error. For purposes of this decision, the "order under review" refers to Order No. 21-UI-17960, and claimant's November 28, 2021 application for review is presumed to be filed in regards to that order.

**FINDINGS OF FACT:** (1) On January 4, 2021, claimant filed an initial application for Pandemic Unemployment Assistance (PUA). At that time, the Department backdated the effective date of claimant's PUA claim to the week of December 6, 2020 (week 50-20).

(2) On February 26, 2021, claimant filed claims for PUA benefits for each of the weeks including March 29, 2020 through May 30, 2020 (weeks 14-20 through 22-20).

(3) On March 10, 2021, claimant requested that the Department backdate her PUA claim to the week of March 29, 2020 through April 4, 2020 (week 14-20).<sup>2</sup>

(4) On March 25, 2021, claimant filed an initial claim for regular unemployment insurance (regular UI) benefits.

(5) On April 3, 2021, claimant filed claims for PUA benefits for each of the weeks including March 29, 2020 through October 3, 2020 (weeks 14-20 through 40-20).

(6) On April 4, 2021, claimant filed claims for PUA benefits for each of the weeks including October 4, 2020 through December 5, 2020 (weeks 41-20 through 49-20).

(7) On April 13, 2021,<sup>3</sup> the Department determined that claimant was ineligible for PUA benefits because she had sufficient wages in her base year to qualify for a valid regular UI claim.<sup>4</sup> Thereafter, the Department determined that the first effective week of claimant's regular UI claim was the week of December 6, 2020 through December 12, 2020 (week 50-20).

(8) On May 25, 2021, claimant filed claims for regular UI benefits for each of the weeks including March 29, 2020 through December 5, 2020 (weeks 14-20 through 49-20). These are the weeks at issue. The Department did not pay claimant PUA or regular UI benefits for any of the weeks at issue.

**CONCLUSIONS AND REASONS:** Claimant filed late claims for regular UI benefits for each of the weeks at issue and is not entitled to benefits for those weeks.

OAR 471-030-0040 (January 11, 2018) provides:

(1) As used in these rules, unless the context requires otherwise:

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<sup>2</sup> EAB has taken notice of these facts, which are contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). Any party that objects to our taking notice of this information must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the noticed fact will remain in the record.

<sup>3</sup> EAB has taken notice of these facts, which are contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). Any party that objects to our taking notice of this information must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the noticed fact will remain in the record.

<sup>4</sup> See Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, Pub. L. 116-136, § 2102(a)(3)(A)(i).

\* \* \*

(b) An “initial claim” is a new claim that is a certification by a claimant completed as required by OAR 471-030-0025 to establish a benefit year or other eligibility period;

\* \* \*

(e) “Backdating” occurs when an authorized representative of the Employment Department corrects, adjusts, resets or otherwise changes the effective date of an initial, additional or reopened claim to reflect filing in a prior week. Backdating may occur based upon evidence of the individual's documented contact on the prior date with the Employment Department or with any other state Workforce agency, or as otherwise provided in this rule.

(2) For the purposes of filing an initial, additional, or reopened claim:

\* \* \*

(d) When filed by Internet, the date of filing shall be the initial date of transmission of the online claim; or

(e) When filed by telephone, the date of filing shall be the date recorded in the completed telephone initial claim record of the agency system or by an employee completing the filing of the claim record.

\* \* \*

(3) An initial, additional, or reopened claim must be filed prior to or during the first week or series of weeks for which benefits, waiting week credit, or noncompensable credit is claimed and prior to or during the first week of any subsequent series thereafter. An initial claim is effective the Sunday of the calendar week in which it is filed. An authorized representative of the Employment Department will backdate an additional or reopened claim to the calendar week immediately preceding the week in which the request to backdate was made when a claimant requests backdating of the additional or reopened claim.

\* \* \*

### **Continued Claims**

OAR 471-030-0045 (January 11, 2018) provides:

(1) As used in these rules, unless the context requires otherwise:

(a) “Continued Claim” means an application that certifies to the claimant’s completion of one or more weeks of unemployment and to the claimant’s status

during these weeks. The certification may request benefits, waiting week credit, or non-compensable credit for such week or weeks. A continued claim must follow the first effective week of an initial, additional or reopen claim, or the claimant's continued claim for the preceding week;

\* \* \*

(4) A continued claim must be filed no later than seven days following the end of the week for which benefits, waiting week credit, or noncompensable credit, or any combination of the foregoing is claimed, unless:

(a) The continued claim is for the first effective week of the benefit year, in which case the week must be claimed no later than 13 days following the end of the week for which waiting week credit is claimed, or

\* \* \*

The primary controversy in this matter is claimant's assertion that she first filed her initial claim for PUA benefits on December 1, 2020. As EAB explained in EAB Decision 2021-EAB-0690, whether claimant first filed (or attempted to file) her initial PUA claim in December 2020, rather than January 2021, is significant because, prior to December 27, 2020, initial PUA claims were required to be backdated to the "first week during the Pandemic Assistance Period that the individual was unemployed, partially unemployed, or unable or unavailable to work because of a COVID-19 related reason listed in section 2102(a)(3)(A)(ii)(I) of the CARES Act."<sup>5</sup> Initial PUA claims filed after December 27, 2020, by contrast, may only be backdated to December 1, 2020.<sup>6</sup> Thus, if claimant *had* first filed or attempted to file an initial claim for PUA benefits on December 1, 2020, that claim may have been backdated to the first week that claimant was unemployed, partially unemployed, or unable or unavailable to work because of a COVID-19 related reason, which for the purposes of this decision is understood to be week 14-20. Further, had claimant's PUA claim been backdated to week 14-20, claimant's regular UI claim might<sup>7</sup> have been considered to have the same effective date once claimant was determined to be ineligible for PUA benefits. However, it is unnecessary to determine whether such a transfer of the effective claim date from claimant's PUA claim to her regular UI claim would be permissible because

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<sup>5</sup> See U.S. Dep't of Labor, Unemployment Insurance Program Letter No. 16-20, Change 1 (April 27, 2020) at 5.

<sup>6</sup> See U.S. Dep't of Labor, Unemployment Insurance Program Letter No. 16-20, Change 4 (January 8, 2021) at 26-27.

<sup>7</sup> It is not clear from the record whether the Department would have backdated claimant's regular UI claim to week 14-20 even if claimant had filed her initial claim for PUA benefits on or prior to December 27, 2020. At hearing, the Department's witness testified that the Department potentially would have transferred individual *weeks* of benefits from a PUA claim to a regular UI claim if there was evidence that an individual had been claiming under the wrong program. Transcript at 13. However, as claimant's regular UI claim was later backdated to the effective date of her PUA claim, it is reasonable to conclude that the Department may have done similarly if it had previously found that her PUA claim should be effective as of week 14-20.

claimant has not met her burden<sup>8</sup> to show that she filed an initial PUA claim on or prior to December 27, 2020.

The only corroborating evidence that claimant produced to support her assertion that she had filed the initial PUA claim on December 1, 2020 was an email dated December 1, 2020—purportedly an acknowledgment from the Department that it had received claimant’s initial claim on that date. Exhibit 1 at 2. At hearing, the Department’s witness testified that the agency’s information technology (IT) department conducted an investigation into the matter, and found that the Department had no record of any emails sent to claimant prior to January 8, 2021. Transcript at 9–10. This testimony was supported by copies of an intradepartmental email chain, dated July 23, 2021, regarding that investigation. Exhibit 4 at 2–4. In relevant part, that investigation found that the Department had record of seven attempts that claimant had made to file via its online claims system (OCS), none of which occurred in December 2020; and that the Department had sent a total of 27 emails to claimant, starting on January 8, 2021, at the same email address listed on the email purportedly from December 1, 2020. Exhibit 4 at 3–4. The Department’s various investigators ultimately reached the conclusion that the email purportedly dated December 1, 2020 was not authentic.

In short, contrary to claimant’s assertion that she filed an initial claim on December 1, 2020, the Department has no record of such a filing—despite the Department’s otherwise extensive and detailed records of their interactions with claimant. In her written argument, claimant attributed this discrepancy to a “glitch” in the Department’s systems. Claimant’s Written Argument at 15. It is possible that such a “glitch” occurred, and it must be acknowledged that the absence of a record of a transaction does not conclusively prove that the transaction did not occur. However, because the Department did not pay claimant benefits for any of the weeks at issue, claimant bears the burden to prove that they should have done so. In light of the significant investigation that the Department conducted into the matter and the notable amount of data that they were able to uncover, the greater weight of the evidence supports the conclusion that the email purportedly from December 1, 2020 was not authentic. As a result, claimant has not met her burden to show that she filed an initial claim for PUA benefits on or prior to December 27, 2020.

Because the preponderance of the evidence shows that claimant did not file her initial PUA claim until January 4, 2021, and that her PUA claim was correctly backdated to December 6, 2020 (week 50–20), all of the weeks at issue occurred prior to the beginning of claimant’s initial claim for benefits. Therefore, the weeks at issue were not filed subsequent to an “initial, additional, or reopened claim” as required by OAR 471-030-0040(3). Additionally, under OAR 471-030-0045(4), a continued claim for the latest of the weeks at issue, week 49-20, must have been claimed no later than December 12, 2020. Claimant claimed the weeks at issue between February 26, 2021 and May 25, 2021. Therefore, even if claimant *had* filed an initial claim that could have properly been assigned an effective date of March 29, 2020, none of the weeks at issue were claimed timely. OAR 471-030-0045 contains no good-cause exception for failing to file a timely continued claim for benefits.

For the above reasons, claimant was not eligible for unemployment insurance benefits during the weeks at issue.

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<sup>8</sup> See *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976) (where the Department has paid benefits it has the burden to prove benefits should not have been paid; 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).

**DECISION:** Order No. 21-UI-179690 is affirmed.

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

**DATE of Service:** January 7, 2022

**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 Court of Appeals website at [courts.oregon.gov](https://courts.oregon.gov). Once on the website, use the ‘search’ function to search for ‘petition for judicial review employment appeals board’. A link to the forms and information will be among the search results.

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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 ໄດ້ ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

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