

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-1017**

*Affirmed*  
*Late Claims for Benefits Denied*  
*Ineligible Weeks 13-21 through 18-21*

**PROCEDURAL HISTORY:** On September 15, 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 28, 2021 through May 8, 2021 (weeks 13-21 through 18-21) and therefore was ineligible to receive benefits for those weeks (decision # 135731). Claimant filed a timely request for hearing. On November 4, 2021, ALJ Amesbury conducted a hearing, and on November 12, 2021 issued Order No. 21-UI-179574, affirming decision # 135731. On November 26, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant filed written arguments on November 29, 2021, December 13, 2021, and December 17, 2021. Claimant's arguments 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 arguments to the extent they were based on the record.

**FINDINGS OF FACT:** (1) On October 3, 2019, claimant filed an initial claim for unemployment insurance benefits. The Department determined claimant had a valid claim for benefits with a first effective week of September 29, 2019 through October 5, 2019 (week 40-19).

(2) The Department had an online system and a telephone system through which individuals could make weekly claims for benefits. The systems called for individuals to certify to completion of a week of unemployment by answering eight yes-or-no questions. In late March 2021, claimant discovered that when she accessed the Department's online system, the system would not allow her to make a weekly claim for benefits. As a result, claimant decided to attempt to make weekly claims for benefits by mailing her work search information to the Department. Claimant "did not even think about using" the Department's telephone system to claim benefits. Transcript at 23.

(3) On April 5, 2021, claimant attempted to claim the week of March 28, 2021 through April 5, 2021 (week 13-21) by mailing her work search information to the Department. The submission claimant mailed to the Department listed the resumes she had submitted and any job interviews she had attended during week 13-21, but did not certify to completion of a week of unemployment by answering the eight yes-or-no questions.

(4) On April 12, 2021, claimant attempted to claim the week of April 4, 2021 through April 10, 2021 (week 14-21) by mailing her work search information to the Department. The submission claimant mailed to the Department listed the resumes she had submitted and any job interviews she had attended during week 14-21 but did not certify to completion of a week of unemployment by answering the eight yes-or-no questions.

(5) On April 19, 2021, claimant attempted to claim the week of April 11, 2021 through April 17, 2021 (week 15-21) by mailing her work search information to the Department. The submission claimant mailed to the Department listed the resumes she had submitted and any job interviews she had attended during week 15-21 but did not certify to completion of a week of unemployment by answering the eight yes-or-no questions.

(6) On April 26, 2021, claimant attempted to claim the week of April 18, 2021 through April 24, 2021 (week 16-21) by mailing her work search information to the Department. The submission claimant mailed to the Department listed the resumes she had submitted and any job interviews she had attended during week 16-21 but did not certify to completion of a week of unemployment by answering the eight yes-or-no questions.

(7) On May 3, 2021, claimant attempted to claim the week of April 25, 2021 through May 1, 2021 (week 17-21) by mailing her work search information to the Department. The submission claimant mailed to the Department listed the resumes she had submitted and any job interviews she had attended during week 17-21 but did not certify to completion of a week of unemployment by answering the eight yes-or-no questions.

(8) On May 10, 2021, claimant attempted to claim the week of May 2, 2021 through May 8, 2021 (week 18-21) by mailing her work search information to the Department. The submission claimant mailed to the Department listed the resumes she had submitted and any job interviews she had attended during week 18-21 but did not certify to completion of a week of unemployment by answering the eight yes-or-no questions.

(9) Claimant heard nothing from the Department after she mailed her work search submissions for weeks 13-21 through 18-21. Claimant re-mailed her work search submissions to the Department several times thereafter but continued to receive no response. On July 9, 2021, claimant called the Department and reached a representative. With the representative's assistance, claimant submitted complete certifications for each of weeks 13-21 through 18-21 by answering the eight yes-or-no questions for each week, and thereby claimed benefits for weeks 13-21 through 18-21, the weeks at issue. The Department did not pay claimant benefits for those weeks.

**CONCLUSIONS AND REASONS:** Claimant filed late claims for benefits for the weeks including March 28, 2021 through May 8, 2021 (weeks 13-21 through 18-21) and is ineligible for benefits for those weeks.

ORS 657.155(1)(b) provides that an unemployed individual shall be eligible to receive benefits with respect to any week only if the individual has made a claim for benefits with respect to such week in accordance with ORS 657.260. ORS 657.260(1) provides that claims for benefits shall be filed in accordance with such regulations as the Department may prescribe. OAR 471-030-0045 (January 11, 2018) provides, in relevant part:

(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[.]

\* \* \*

(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[.]

\* \* \*

“As directed by the Director,” a continued claim must be filed in person at any Employment Department office in the state of Oregon, by United States mail, by fax, by internet, or by telephone. OAR 471-030-0045(3)(a)-(e). Because the Department did not pay claimant benefits for the weeks at issue, claimant bears the burden to establish by a preponderance of the evidence that benefits should have been paid. *See Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

Claimant claimed benefits for weeks 13-21 through 18-21. None of the weeks at issue were the first effective week of claimant’s benefit year. Therefore, under OAR 471-030-0045(4), her continued claims for benefits for weeks 13-21, 14-21, 15-21, 16-21, 17-21, and 18-21 were due by April 10, 2021, April 17, 2021, April 24, 2021, May 1, 2021, May 8, 2021, and May 15, 2021, respectively. The record shows that for each of the weeks at issue, claimant mailed work search information to the Department within seven days following the end of each respective week. However, claimant failed to meet her burden to show that the mailed work search submissions constituted valid continued claims. This is because OAR 471-030-0045(1)(a) defines a continued claim to mean (unless context requires otherwise) “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.” Here, each of the mailed work search submissions merely listed the resumes claimant had submitted and any job interviews she had attended during the respective week.

The submissions did not answer the eight yes-or-no questions the Department required individuals to answer to certify to completion of a week of unemployment. Thus, claimant did not show that her mailed work search submissions amounted to continued claims for benefits.

Accordingly, claimant did not file a claim for each of the weeks at issue by the timely filing deadline for each week. Rather, claimant first submitted continued claims for all of the weeks when she contacted the Department representative on July 9, 2021, which was more than seven days following the end of each of the weeks at issue. Claimant filed the claims late because she was unable to use the Department's online system to claim and decided to attempt to make weekly claims for benefits by mailing her work search information to the Department, which were not sufficient to constitute valid continued claims. The record indicates claimant mailed her work search submissions with the sincere belief that doing so would be sufficient to claim each week of benefits. Even so, OAR 471-030-0045(4) contains no good-cause exception for failing to file a timely continued claim. Therefore, because claimant filed late claims for the weeks at issue, claimant is not entitled to benefits for those weeks.

**DECISION:** Order No. 21-UI-179574 is affirmed.

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

**DATE of Service:** January 3, 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.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



# 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  
[www.Oregon.gov/Employ/eab](http://www.Oregon.gov/Employ/eab)

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.