

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-1188**

*Reversed*  
*Eligible Week 38-22*

**PROCEDURAL HISTORY:** On October 14, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant filed a late claim for unemployment insurance benefits for the week of September 18, 2022 through September 24, 2022 (week 38-22) and therefore was denied unemployment insurance benefits for that week (decision # 112922). Claimant filed a timely request for hearing. On November 9, 2022, ALJ Logan conducted a hearing at which the employer failed to appear, and on November 10, 2022 issued Order No. 22-UI-207058, affirming decision # 112922. On November 29, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) At all times relevant to this decision, Eek, Inc. employed claimant.

(2) On September 9, 2022, claimant filed an initial claim for unemployment insurance benefits through the Department's Work Share program.

(3) Under the Work Share program, employers bore the responsibility for filing weekly claims for benefits on behalf of their employees.

(4) On October 7, 2022, the employer claimed benefits on claimant's behalf for the week of September 18, 2022 through September 24, 2022. This is the sole week at issue. The deadline to file a timely claim for benefits for that week was October 1, 2022.

**CONCLUSIONS AND REASONS:** Claimant was eligible for benefits during week 38-22.

ORS 657.380(1)(b) provides, in pertinent part, that an individual is unemployed and eligible to receive shared work benefits with respect to any week if, in addition to meeting all other eligibility requirements of Chapter 657, the Department finds that "during the week the individual's normal weekly hours of work were reduced, in accordance with an approved plan, at least 20 percent but not more than 40 percent, with a corresponding reduction in wages."

Continued claims for shared work benefits shall be completed by the shared work employer and submitted to the Employment Department no later than seven days following the end of the week for which benefits, waiting week credit, non-compensable credit week, or any combination of these is claimed. Shared work employees must provide the employer all information needed in order to submit a timely continued claim for shared work benefits. Such information may include, but is not limited to, information about work and earnings for another employer, missed opportunities to work, or other paid time used during the week being claimed. OAR 471-030-0079(9) (June 25, 2021).

Claimant's claim for benefits for week 38-22 was due within seven days of the end of the week for which benefits were claimed. As week 38-22 ended on September 24, 2022, the claim should have been filed by the employer no later than October 1, 2022. Because the employer did not submit the claim until October 7, 2022, the claim was late.

As the order under review correctly stated, OAR 471-030-0079(9) does not contain a good-cause exception for late weekly claims filed under the Work share program. Order No. 22-UI-207058 at 2. However, in contrast with regular weekly claims for benefits,<sup>1</sup> for which the claimant is directly responsible for filing on their own behalf, an employer bears the sole responsibility for filing claims under the Work Share program. At hearing, the Department's witness testified that the employer had previously filed timely weekly claims on claimant's behalf. Audio Record at 8:30. Further, the record does not show that the employer had previously filed late weekly claims on claims on claimant's behalf. Thus, in these circumstances, claimant had neither the ability to file weekly claims for himself nor reason to suspect that the employer would fail to file timely weekly claims on his behalf.

The record shows that claimant was not afforded due process because he had no control over when (or if) a claim for weekly benefits under the Work Share program was filed on his behalf, had no way of knowing if the employer failed to timely file on his behalf, and had no recourse under the rules or procedures established by the Department if the employer filed late. Had the Department administered the program in a way that allowed claimant to ensure that either he, or the employer on his behalf, timely filed a claim for benefits for the week at issue, the record suggests that claimant would have done so. Therefore, equity dictates that claimant was eligible to receive benefits for the week at issue.

**DECISION:** Order No. 22-UI-207058 is set aside, as outlined above.

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

**DATE of Service:** February 3, 2023

**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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<sup>1</sup> *See* OAR 471-030-0045 (January 11, 2018).

**NOTE:** This decision reverses an order that denied benefits. Please note that payment of benefits, if any are owed, may take approximately a week for the Department to complete.

**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 ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

**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**  
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