

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0279-R**

*Request for Reconsideration Allowed*  
*EAB Decision 2023-EAB-0279 Affirmed on Reconsideration*

**PROCEDURAL HISTORY:** On October 8, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant failed to provide information in accordance with the Department's rules and therefore was ineligible to receive unemployment insurance benefits for the weeks including May 23, 2021 through August 21, 2021 (weeks 21-21 through 33-21) and until the reason for the denial ended (decision # 63759). Claimant filed a timely request for hearing. On February 14, 2023, ALJ Goodrich conducted a hearing, and on February 17, 2023 issued Order No. 23-UI-216555, affirming decision # 63759. On March 3, 2023, claimant filed an application for review with the Employment Appeals Board (EAB). On April 14, 2023, EAB issued EAB Decision 2023-EAB-0279, reversing Order No. 23-UI-216555 by concluding that claimant did not fail to provide information in accordance with the Department's rules and therefore was eligible to receive benefits during weeks 21-21 through 33-21. On May 3, 2023, the Department filed a request for reconsideration of EAB Decision 2023-EAB-0279. This decision is issued pursuant to EAB's authority under ORS 657.290(3).

**CONCLUSIONS AND REASONS:** The Department's request for reconsideration is allowed. EAB Decision 2023-EAB-0279 is adhered to on reconsideration.

ORS 657.290(3) authorizes the Employment Appeals Board to reconsider any previous decision of the Employment Appeals Board, including "the making of a new decision to the extent necessary and appropriate for the correction of previous error of fact or law." "Any party may request reconsideration to correct an error of material fact or law, or to explain any unexplained inconsistency with Employment Department rule, or officially stated Employment Department position, or prior Employment Department practice." OAR 471-041-0145(1) (May 13, 2019). The request is subject to dismissal unless it includes a statement that a copy was provided to the other parties, and is filed on or before the 20<sup>th</sup> day after the decision sought to be reconsidered was mailed. OAR 471-041-0145(2).

The Department filed a request for reconsideration consistent with the requirements set forth in OAR 471-041-0145. The request for reconsideration is, therefore, allowed.

In their request, the Department offered two bases for disputing the outcome of the EAB decision under reconsideration. First, the Department asserted:

A voicemail was left, specifically stating that we were calling regarding their unemployment insurance claim and that we would need to make a determination with the information available if we did not hear back from them by October 6, 2021 at 3:30 pm. We listened to a recording of the adjudicator's message to the claimant and confirmed that she noted the consequence of not returning our call.

Department's Request for Reconsideration at 1. This information is not in the record. To the extent that the Department seeks to add this information to the record, the Department has not shown, under OAR 471-041-0090(1)(b)(B) (May 13, 2019) that factors or circumstances beyond the Department's reasonable control prevented them from offering the additional evidence into the hearing record. Therefore, in reviewing the EAB decision under reconsideration, EAB has only considered information in the hearing record.

Next, the Department disputed EAB's conclusion that the dates of ineligibility determined in the order under review were incorrect, asserting that:

[The EAB decision under reconsideration] concluded that since the department requested information by October 6, 2021, the claimant could only potentially be denied for that week and forward. However, OAR 471-030-0025 does not make that distinction, stating that OED may require information on weeks that have already been claimed. The information required to properly process their claim was for weeks that had already passed, but still necessary because a separation can affect subsequent weeks that are claimed.

Department's Request for Reconsideration at 1. This argument fails to take into account the Department's own internal guidance used to determine when the date of ineligibility should begin under various circumstances. When the Department determines that a claimant has not provided requested information necessary to process their claim, the Department calculates the start date of the resultant ineligibility for benefits according to the following guidelines:

1. For issues discovered at the initial, additional and reopen claim, start failure to provide decisions with the week for which we needed the missing information, e.g., the week of the IC, AC, or RO.<sup>1</sup>
2. For issues arising during the continued claim series after the weeks have been paid or credited, start the decision with the week the requested information is due.
3. For issues arising during the continued claim series when the weeks have not been paid or credited, start the decision with the week for which we needed the missing information. \* \* \*

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<sup>1</sup> "IC," "AC," and "RO" refer to Initial, Additional, and Reopened claims, respectively. See OAR 471-030-0040 (January 11, 2018).

Oregon Employment Department, UI Benefit Manual § 255 (Rev. 09/11/07).

Under Department guidance, above, the date on which ineligibility due to a failure to provide information should start depends both on when the issue was discovered (i.e., when the Department first became aware of the need for information) and whether the weeks in question were paid. Here, the record contains no evidence regarding when, or how, the need for the requested information was discovered. The Department sought the information nearly a year after claimant filed her initial claim in November 2020, well after they paid claimant benefits for the weeks at issue. Given these facts, and the fact that the record also fails to show that claimant filed an additional claim or reopened claim during the period at issue, it is reasonable to infer that, more likely than not, the issue was not discovered at the time that claimant filed her initial claim or an additional or reopened claim.

Rather, it is reasonable to infer that the Department discovered the need for the information either during or after the continued claim series (i.e., as the result of claimant having filed a weekly claim) for the weeks at issue. Therefore, even if claimant did fail to provide information in response to the Department's request, under the Department's own guidance, the proper date of ineligibility is the date on which the information was due. That date was October 6, 2021. Because all of the weeks at issue preceded the week which included October 6, 2021, claimant did not fail to furnish information requested by the Department during the weeks at issue, and is therefore not ineligible to receive unemployment insurance benefits on that basis.

**DECISION:** The Department's request for reconsideration is allowed. On reconsideration, EAB Decision 2023-EAB-0279 is adhered to as clarified herein.

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

**DATE of Service: June 2, 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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# 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 الاستئناف 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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