

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0439**

*Affirmed*  
*Ineligible Weeks 36-20 through 39-20, 52-20 and 53-20, and 12-21*

**PROCEDURAL HISTORY:** On July 2, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant had filed late claims for benefits for the weeks from August 30 through September 26, 2020 (weeks 36-20 through 39-20) and was ineligible for benefits for those weeks (decision # 134131). Also on July 2, 2021, the Department served notice of an administrative decision denying claimant's request to backdate her reopened claim to December 20, 2020 and concluding that she was ineligible for benefits from December 20, 2020 through January 2, 2021 (weeks 52-20 through 53-20) (decision # 134352). On July 7, 2021, the Department served notice of an administrative decision denying claimant's request to backdate her reopened claim to March 21, 2021 and concluding that she was ineligible for benefits from March 21 through 27, 2021 (week 12-21) (decision # 85941). Claimant filed timely requests for hearing on all three administrative decisions.

On June 30, 2022, ALJ Frank conducted a hearing on all three administrative decisions, which was continued on March 2, 2023. On March 9, 2023, ALJ Frank issued Orders No. 23-UI-218588, 23-UI-218589, and 23-UI-218587, affirming decisions # 134131, 134352, and 85941. On March 20, 2023, claimant filed applications for review of Orders No. 23-UI-218588, 23-UI-218589, and 23-UI-218587 with the Employment Appeals Board (EAB).<sup>1</sup>

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-218588, 23-UI-218589, and 23-UI-218587. For case-tracking purposes, this decision is being issued in triplicate (EAB Decisions 2023-EAB-0440, 2023-EAB-0439, and 2023-EAB-0441).

**WRITTEN ARGUMENT:** Claimant's letter to OAH, construed as applications for review of the orders under review, contained a written argument that EAB considered when reaching this decision. In particular, claimant asserted that she did not have access to a computer, or internet access, or access to a Department office in which she could have filed timely claims for benefits. Claimant's Written Argument at 1. As explained in the analysis below, the rules applicable to the timely filing or backdating

<sup>1</sup> On March 20, 2023, claimant submitted a letter to the Office of Administrative Hearings (OAH) that was construed as applications for review of the orders under review.

of claims do not contain exceptions, even for circumstances that might otherwise be considered good cause.

**FINDINGS OF FACT:** (1) On September 2, 2020, claimant filed an initial application for Pandemic Unemployment Assistance (PUA) benefits. At that time, claimant claimed PUA benefits for the weeks from March 8 through April 18, 2020 (weeks 11-20 through 16-20). On or around February 4, 2021, the Department determined that claimant was ineligible for PUA benefits because she was eligible for a regular unemployment insurance (regular UI) claim.<sup>2</sup>

(2) On June 15, 2021, claimant contacted the Department by phone and, with the assistance of a Department representative, filed an initial application for regular UI benefits. The Department subsequently determined that claimant had monetarily valid claim for regular UI benefits. Because claimant had previously filed an application for PUA benefits, the Department backdated claimant's regular UI claim to March 8, 2020 (week 11-20). The Department paid claimant regular UI benefits for weeks 11-20 through 16-20 because she had timely claimed PUA benefits for those weeks.<sup>3</sup>

(3) On June 17, 2021, claimant contacted the Department again and claimed benefits for August 30 through September 26, 2020 (weeks 36-20 through 39-20), December 20, 2020 through January 2, 2021 (weeks 52-20 through 53-20), and March 21 through 27, 2021 (week 12-21). These are the weeks at issue. The Department did not pay claimant benefits for the weeks at issue.

(4) On June 17, 2021, claimant also claimed benefits for a series of weeks up to and including August 23, 2020 through August 29, 2020 (week 35-20). Claimant did not claim benefits for any weeks between weeks 39-20 and 52-20, or any weeks between weeks 53-20 and 12-21. Claimant did not file a reopened claim prior to claiming weeks 52-20 and 53-20 or week 12-21.

(5) At the time that claimant claimed benefits for the weeks at issue, the Department did not offer any exceptions to the general rules regarding the backdating of initial, additional, reopened or continued claims, or the filing of continued claims.

**CONCLUSIONS AND REASONS:** Claimant was not eligible for benefits for the weeks at issue.

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). 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.

(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;

(c) "Additional claim" is a claim certification by a claimant completed as required by OAR 471-030-0025 that restarts a claim during an existing benefit year or other eligibility period and certifies to the end of a period of employment;

(d) "Reopened claim" is a certification by a claimant completed as required by OAR 471-030-0025 that restarts a claim during an existing benefit year or other eligibility period and certifies that there was no employment in any week since last reporting on this claim;

(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.

\* \* \*

(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.

\* \* \*

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[.]

\* \* \*

The matters on appeal in these consolidated cases stem from three administrative decisions issued in July 2021. Two of these decisions (decisions # 134352 and 85941) denied claimant benefits on the basis that claimant requested that her restarted claims be backdated to dates not permitted under the Department's rules. In other words, claimant claimed those weekly benefits when the respective weeks at issue did not directly follow the first effective week of an initial, additional or reopened claim or a continued claim for the preceding week. Claimant did not claim benefits for the week of December 13, through 19, 2020 (week 51-20), but did claim benefits for weeks 52-20 and 53-20, the weeks at issue in decision # 134352. Because claimant had a gap of at least one week between the weeks claimed in that decision and the last chronological week claimed prior to that, claimant was required under OAR 471-030-0040(1)(d) to have file a reopened claim prior to claiming weeks 52-20 and 53-20. The other administrative decision (decision # 134131) denied claimant benefits on the basis that she filed the weekly claims at issue in that decision late.

For context, in typical circumstances, an individual must file a reopened or additional claim when they claim one or more weeks of benefits, stop claiming benefits for one or more weeks, and then start claiming benefits again. The main purpose of this requirement is to determine whether the individual had any additional employment during the period in which they were not claiming benefits. It is not clear from the record why the Department drew a distinction between the circumstances in decisions # 134352 and 85941 versus those in decision # 134131, however, as the weeks at issue in all three of the administrative decisions were claimed at the same time. Nevertheless, as outlined below, claimant has not met her burden<sup>4</sup> to show that she was eligible for benefits for any of the weeks at issue.

**Backdating of reopened claims.** On June 17, 2021, claimant claimed benefits for weeks 52-20 and 53-20, and week 12-21. Claimant did not claim benefits for the weeks immediately preceding either week 52-20 or week 12-21. Therefore, as explained above, claimant was required to file a reopened or additional claim prior to claiming either of those weeks. It is not clear from the record that claimant explicitly requested to file reopened claims for weeks 52-20 and 12-21, or to backdate such reopened claims. However, claimant *functionally* requested to file reopened claims for those two weeks by claiming benefits for those weeks without having claimed the weeks that immediately preceded them, and likewise functionally requested that the reopened claims be backdated to the weeks she actually claimed.

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<sup>4</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).

Nevertheless, under OAR 471-030-0040(3), the 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. Claimant's request to backdate the reopened claims was made on June 17, 2021 (week 24-21), and the Department was only permitted under its rules to backdate the reopened claims to the prior week, which was the week of June 6 through 12, 2021 (week 23-21). Because the Department could not backdate claimant's reopened claims to week 52-20 or 12-21, claimant claimed those weeks (as well as week 52-20) without having filed reopened claims to precede them. As a result, those weeks did not follow the first effective week of an initial, additional or reopened claim or a continued claim for the preceding week. There are no exceptions to these requirements under the applicable rules. Therefore, under OAR 471-030-0045(1), claimant was not eligible for benefits for weeks 52-20 and 53-20, and 12-21.

**Late claims for benefits.** Claimant claimed benefits for weeks 36-20 through 39-20. The last of those weeks, week 39-20, ended on September 26, 2020. The first effective week of claimant's claim was week 11-20. As such, none of these weeks were the first effective week of claimant's claim, and timely claims for these weeks were required under OAR 471-030-0045(4) to be filed no later than seven days following the end of each respective week. The latest date that claimant could have timely filed a claim for any of these weeks (week 39-20) was October 3, 2020. There is no indication in the record that claimant filed claims, or attempted to file claims, for any of these weeks until June 17, 2021. The Department offered no exceptions to the timely filing requirements for continued claims at the time that claimant claimed these weeks. Therefore, claimant was not eligible for benefits for weeks 36-20 through 39-20 because she filed claims for those weeks late.<sup>5</sup>

Note that the Department paid claimant regular UI benefits for weeks 11-20 through 16-20. Prior to claiming regular UI benefits for any of the weeks at issue in these matters, claimant filed claims for PUA benefits for weeks 11-20 through 16-20 that were considered timely for purposes of the PUA program.<sup>6</sup> The Department later determined that claimant was not eligible for PUA benefits because she qualified for a regular UI claim, but honored claimant's claims for regular UI benefits for weeks 11-20 through 16-20 as timely specifically because she had timely claimed the same weeks under the PUA program. The same cannot be said for the weeks at issue in these matters, because the record does not show that claimant claimed, or attempted to claim, benefits for the weeks at issue at any point prior to June 17, 2021.

For the above reasons, claimant was not eligible for benefits for weeks 36-20 through 39-20, 52-20 and 53-20, and 12-21.

**DECISION:** Orders No. 23-UI-218588, 23-UI-218589, and 23-UI-218587 are affirmed.

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

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<sup>5</sup> In addition to being filed without timely reopened claims, claimant's claims for the other weeks at issue in these matters (weeks 52-20, 53-20, and 12-21) were also late, and claimant was therefore ineligible to receive benefits for those weeks for that reason as well.

<sup>6</sup> See generally 15 U.S.C. § 9021

**DATE of Service: April 28, 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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