

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0746**

*Reversed*  
*Eligible Weeks 32-22 through 33-22*

**PROCEDURAL HISTORY:** On May 12, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant filed late claims for benefits for the weeks of August 7, 2022 through August 20, 2022 (weeks 32-22 through 33-22) and therefore was ineligible to receive benefits for those weeks (decision # 144404). Claimant filed a timely request for hearing. On June 20, 2023, ALJ Janzen conducted a hearing for which the Department submitted an attestation in lieu of attendance. Also on June 20, 2023, ALJ Janzen issued Order No. 23-UI-228273, affirming decision # 144404. On July 5, 2023, claimant filed an application for review with the Employment Appeals Board (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.

**FINDINGS OF FACT:** (1) On August 12, 2022, claimant filed an initial claim for unemployment insurance benefits, with a first effective week (FEW) ending August 13, 2022 (week 32-22). Claimant claimed benefits for the weeks of August 7, 2022 through August 20, 2022 (weeks 32-22 through 33-22). These are the weeks at issue. The Department did not pay claimant benefits for the weeks at issue.

(2) During the weeks at issue, claimant had been earning money by walking dogs, which she believed was considered self-employment.

(3) In August 2022, claimant made several attempts to claim the weeks at issue via the Department's online claim system. When claimant indicated on the weekly claims form that she had worked during the weeks at issue, the forms asked her if she had earnings from self-employment. Claimant answered that she was self-employed, based on her belief about how her dog-walking work was classified. When claimant answered that she was self-employed, the claim system told claimant that she should contact the Department to finish filing her weekly claim.

(4) Based on what the claim system told claimant after she indicated that she was self-employed, claimant contacted the Department via phone several times in August 2022 in order to complete the filing of her claims for the weeks at issue. During those calls, the representatives to whom she spoke did not file the weekly claims on claimant's behalf, but instead advised her to wait until an adjudicator contacted her.

(5) An adjudicator contacted claimant on around September 28, 2022 and advised claimant that her dog-walking earnings were not considered self-employment, and that she should file her claims for the weeks at issue. Claimant did so that day.

**CONCLUSIONS AND REASONS:** Claimant filed timely claims for benefits for the weeks at issue.

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;

\* \* \*

(2) A claimant, in order to obtain benefits, waiting week credit, or non-compensable credit for a week of unemployment, must file a continued claim for the week by any method approved by the Director.

(3) As directed by the Director, a continued claim must be filed:

(a) In person at any Employment Department office in the state of Oregon. When delivered in person to any Employment Department office in the state of Oregon, the date of filing shall be the date of delivery, as evidenced by the receipt date stamped or written by the public employee who receives the document;

(b) By United States mail. When filed by mail, the date of filing shall be the date of the postmark affixed by the United States Postal Service. In the absence of a postmarked date, the date of filing shall be the most probable date of mailing as determined by the Employment Department;

(c) By fax. When filed by fax, the date of filing shall be the encoded date on the fax document unless such date is absent, illegible, improbable or challenged, in which case the fax receipt date, if available, shall be the date of filing. If a filing date cannot otherwise be determined, the filing date shall be the most probable date of faxing as determined by the Employment Department;

(d) By Internet. When filed on line, the date of filing shall be the initial date of transmission of the on line continued claim; or

(e) By telephone. When filed by telephone, the date of filing shall be the date marked, stamped, or imprinted on the document by the agency system that records the oral request or by the employee accepting the continued claim.

(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

(b) The claimant routinely files weekly claims by submitting a weekly paper certification forms, in which case the week is timely if it is filed to the Employment Department no later than seven days, as per sections (3)(a)–(c) of this rule, after the Employment Department originally sent the paper certification form to the claimant.

\* \* \*

The first of the two weeks at issue in this matter is week 32-22, which ended on August 13, 2022. As this was the FEW of claimant’s claim, claimant was required to file a weekly claim for benefits for that week no later than 13 days following the end of that week (August 26, 2022) in order to be eligible for benefits for that week. The second week at issue was week 33-22, which ended on August 20, 2022. As that week was not the FEW, claimant was required to file a weekly claim for this week no later than seven days following the end of that week, which was August 27, 2022, in order to be eligible for benefits that week. Because claimant did not file her claims for the weeks at issue until September 28, 2022, those filings were late. The Department’s rules do not contain a “good cause” exception for late-filed weekly claims.

However, the record shows that, more likely than not, claimant also constructively filed timely claims for the weeks at issue. At hearing, claimant testified that she made “multiple” attempts to claim the weeks at issue via the online claim system, and that each time she was advised to contact the Department to finish filing. Audio Record at 16:28. Claimant also testified that she called the Department and spoke to representatives “several times” in August 2022, although she was unable to specify on which dates in August she called. Audio Record at 26:05.

The Department noted in its attestation that there was “no record that claimant previously *claimed* the week(s) at issue by the online claim system or by phone with the weekly claim line.” Exhibit 1 at 2. The Department also noted that claimant “called on September 2, 2022 requesting to speak with the adjudicator about the work separation issue...” and that “[t]he adjudicator returned the call September 2, 2022 and left a voice mail advising the claimant that claimant needs to claim a week for benefits.”

Exhibit 1 at 3. While these statements suggest that claimant may have made no calls or other attempts to file her weekly claims for the weeks at issue until September 28, 2022, in fact they only show that the Department either did not include the calls in the attestation or they had no *record* of any such attempts. The Department did not provide a witness to the hearing, and as such could not provide clarifying testimony on the issue. Therefore, claimant's assertions that she made several calls to the Department in August 2022 to try to file weekly claims for the weeks at issue are uncontroverted in the record, and the facts have been found accordingly.

OAR 471-030-0045(3)(e) states that weekly claims filed by telephone are considered filed "the date marked, stamped, or imprinted on the document by the agency system that records the oral request or by the employee accepting the continued claim." Claimant was unable to state the precise dates in August 2022 on which she contacted the Department. However, claimant was eligible to timely claim week 32-22 from August 14, 2022 through August 26, 2022, a 13-day period of time which constituted more than half of the days between August 14, 2022 through the end of that month. Similarly, claimant was eligible to timely claim week 33-22 from August 21, 2022 through August 27, 2022, a seven-day period of time which constituted more than half of the days between August 21, 2022 through the end of that month.

In other words, if claimant contacted the Department even once at some point during the portions of August 2022 after the end of the respective weeks at issue, such a contact would, statistically, more likely than not have occurred during the respective timely filing periods for the weeks at issue. As such, claimant more likely than not contacted the Department, in an effort to complete her weekly claims for the weeks at issue, during the timely filing periods for those weeks. Given that claimant was specifically calling to complete her weekly claims as advised by the claims system, it is reasonable to construe those calls as "oral requests" per OAR 471-030-0045(3)(e).

The record does not show why the Department representatives to whom claimant spoke during August 2022 did not record claimant's oral requests to file her weekly claims, as contemplated by OAR 471-030-0045(3)(e), instead advising her to wait for an adjudicator to call her. Nevertheless, as explained above, claimant more likely than not made those requests during the timely filing periods for the weeks at issue. As such, even if the Department failed to properly record claimant's requests to file her weekly claims, claimant constructively filed timely claims for the weeks at issue, and therefore is not ineligible for benefits for those weeks on the basis of late-filed claims.

**DECISION:** Order No. 23-UI-228273 is set aside, as outlined above.

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

**DATE of Service:** August 17, 2023

**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.

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