

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-1022**

*Affirmed*  
*Request to Backdate Initial Claim Denied*  
*Ineligible Week 26-23*

**PROCEDURAL HISTORY:** On July 28, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision denying claimant's request to backdate his initial claim to June 25, 2023, and concluding that claimant therefore was not eligible for benefits for the week of June 25 through July 1, 2023 (week 26-23) (decision # 72245). Claimant filed a timely request for hearing. On August 22, 2023, ALJ Ramey conducted a hearing, and on August 30, 2023, issued Order No. Order No. 23-UI-234640, affirming decision # 72245. On September 7, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant submitted two written arguments with his application for review, one 12 pages long, and the other 6 pages long. The longer document included all of the pages submitted in the shorter document. For purposes of this decision, the longer document will be referred to in the singular as claimant's written argument.

Claimant's written 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 him 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.

In his written argument, claimant stated: "I did not expect to lose weeks of UI benefits due to OED reps' wrong info & long delays since 5/16/23. Hurt deeply, I trust you to make it right to backdate my UI claim to 5/16/23." Claimant's Written Argument at 1. Claimant essentially asserts the Department should be estopped from denying claimant benefits for weeks he claimed through July 1, 2023, because he detrimentally relied on incorrect information they provided on May 16, 2023.

As a preliminary matter, the sole week at issue in this case is week 26-23, the week of June 25, 2023, through July 1, 2023. The order under review, as adopted herein, correctly concluded that claimant was not eligible for benefits for that week because the week was prior to the first effective week of his initial

claim, and there is no good-cause exception that would allow for backdating of his initial claim to week 26-23. Order No. 23-UI-234640 at 2. Even if there was such a good-cause exception, however, decision # 72245 only denied claimant benefits for week 26-23, and that week was likewise the only week of benefits considered at hearing. Eligibility for any weeks of benefits that claimant claimed in addition to week 26-23 is outside of the scope of this matter, and EAB lacks jurisdiction to address those weeks.

Claimant further suggestion that he would have been eligible for benefits for any week prior to week 27-23 (the first effective week of his claim), had the Department not initially given him misleading information, is incorrect. To be sure, claimant's confusion over the matter is understandable, as the reasons for his ineligibility are not entirely straightforward. However, a review of the Department's records and the hearing record suggests that the following series of events led to claimant's current concerns.

On May 16, 2023, claimant contacted the Department by phone in order to file an initial claim. Claimant did not complete the filing of his initial claim at that time because the Department's representative advised him that he still had a claim in Washington. Thereafter, claimant claimed benefits on his Washington claim, which did not pay out because he had no balance remaining on that claim. The Washington claim was set to expire on August 12, 2023. On or around June 9, 2023, claimant contacted the Department again and successfully filed an initial claim in Oregon. However, claimant's Oregon claim was not found to be monetarily valid at the time because the Department had not yet received his wage information from his Oregon employer or out-of-state wages from Washington and California. Claimant filed several weekly claims against his Oregon claim, but those weekly claims did not pay out because the claim was still considered monetarily non-valid.

On July 11, 2023, claimant spoke to the Department again and was advised of several options available to him that would allow him to form a monetarily valid claim and therefore potentially be paid benefits. Those options consisted of re-filing his initial claim in Oregon to be effective in July 2023 rather than June 2023 using his combined wages from all three states, which would give him a weekly benefit amount of \$812, or using either his combined wages or solely his California wages to re-file in California, which would give him a weekly benefit amount of \$450. The representative also advised claimant that if he chose to re-file his claim in Oregon, effective July 2023, he would not be eligible for benefits he had claimed prior to the effective date of the July 2023 Oregon claim. Claimant chose that option. A few days later, the Department obtained claimant's out-of-state wage information from California and Washington. Although it is not clear when, the Department also obtained claimant's wage information from an Oregon employer. These wages were combined to form a monetarily valid claim with a first effective date of July 2, 2023 (week 27-23).

Claimant's wage history in the Department's claim system shows that he had wages and hours from California for the second quarter of 2022, wages and hours from Washington for the second and third quarters of 2022 and wages and hours from an Oregon employer for the first and second quarters of 2023. Claimant had no reported wages or hours from any state in the fourth quarter of 2022, and had no Oregon wages reported in 2022.

The above wage information is relevant because it shows that regardless of what information the Department gave claimant, the law simply would never have permitted claimant to form a monetarily valid claim in Oregon with an effective date earlier than week 27-23. Under Oregon law, for a claim to

be monetarily valid, the individual must have either “[w]orked in subject employment in the base year with total base year wages of \$1,000 or more and have total base year wages equal to or in excess of one and one-half times the wages in the highest quarter of the base year,” or worked a minimum of 500 hours in employment subject to ORS Chapter 657 during their base year. ORS 657.150(2)(a)(A), (2)(B)(b).

Under ORS 657.010(1), “Base year” means the first four of the last five completed calendar quarters preceding the benefit year. For either the Oregon initial claim that claimant filed in June 2023, or the one he nearly filed in May 2023, claimant’s base year would have been determined to be all four calendar quarters of 2022. Because claimant had no Oregon wages reported in his base year, had he filed his initial in May or June 2023, claimant **would not have been eligible for benefits in Oregon at that time**, and would have **only been eligible for a claim in California**.

Note that in some circumstances, individuals are able to form monetarily valid claims using an “alternate base year.” Under ORS 657.173(1)(a), “in the case of an individual who is not eligible for benefits under ORS 657.150(2) using the definition in ORS 657.010(1), “base year” means the last four completed calendar quarters preceding the benefit year, if use of this alternate definition of “base year” makes the individual eligible for benefits under ORS 657.150(2). Claimant *may* have been able to form a monetarily valid claim in Oregon, filed in the second quarter of 2023, had he been eligible to elect an alternate base year, as the first quarter of 2023—during which he *did* have Oregon wages—would have been part of such a base year. However, under ORS 657.173(b), claimant was **not permitted to file using an alternate base year** because the Department determined that he qualified for a California claim, using a “regular” base year, at that time.

Thus, in July 2023, claimant’s only options to obtain benefits were either to file a claim against California (effective in July 2023 or, perhaps, an earlier date), or to file in Oregon, effective week 27-23. To the extent the Department gave claimant incorrect or misleading information, it appears that they merely failed to explain this to claimant when he first contacted them in May 2023. However, even if the Department had given claimant this information on May 16, 2023, his options would have remained the same, because he was **not eligible for an alternate base year claim in Oregon** because he *did* qualify for a regular base year in California, and **could not qualify for a monetarily valid claim in Oregon until July 2023**.

Claimant may have, regrettably, been inconvenienced by the lack of clarity initially provided by the Department, but he was not prejudiced by it, and did not lose out on benefits to which he would otherwise have been entitled as a result. Had he been given accurate information in May 2023, it is likely that the Department would have advised him either to file in California at that time (resulting in a weekly benefit amount of \$450); or to wait until July 2023 to file in Oregon, at which point his Oregon weekly benefit amount would be nearly double. Despite his assertions to the contrary, claimant has, therefore, essentially received the best possible outcome available to him under the law.

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the order under review is **adopted**.

**DECISION:** Order No. 23-UI-234640 is affirmed.

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

**DATE of Service: October 13, 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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