

**EMPLOYMENT APPEALS BOARD DECISION**  
**2024-EAB-0065**

*Reversed*  
*Eligible to Backdate Initial Claim to Week 47-23*

**PROCEDURAL HISTORY:** On November 30, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision denying claimant's request to backdate her initial claim to November 19, 2023, and concluding that she was therefore ineligible to receive unemployment insurance benefits for the week of November 19, 2023, through November 25, 2023 (week 47-23) (decision # 153542). Claimant filed a timely request for hearing. On January 3, 2024, ALJ Sachet-Rung conducted a hearing for which the Department submitted an attestation in lieu of attendance, and on January 5, 2024, issued Order No. 24-UI-244835, affirming decision # 153542. On January 10, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** EAB considered claimant's written argument when reaching this decision.

**EVIDENTIARY MATTER:** EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of claimant's handwritten narrative enclosed with the request for hearing, and has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 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 exhibit will remain in the record.

**FINDINGS OF FACT:** (1) On the evening of Saturday, November 25, 2023, claimant attempted to file an initial claim for unemployment insurance benefits via the Department's online claim system. At that time, the claim system informed claimant that it was temporarily unavailable until 4:00 a.m. the following day. Claimant memorialized this message in her personal notes. Audio Record at 13:30.

(2) On November 26, 2023, claimant again attempted to file an initial claim via the Department's online claim system, and was again unsuccessful.

(3) On November 27, 2023, claimant contacted the Department via phone and spoke to a representative who helped claimant file her initial claim. The Department determined that the first effective week

(FEW) of claimant's claim was the week of November 26, 2023, through December 2, 2023 (week 48-23).

(4) On November 28, 2023, claimant contacted the Department again and, with the help of a representative, filed a weekly claim for the week of November 19, 2023, through November 25, 2023 (week 47-23). This is the sole week at issue. The Department did not pay claimant benefits or give her waiting week credit for the week at issue because that week occurred prior to the FEW of her claim.

(5) When claimant filed her request for hearing on decision # 153542, she included a written narrative which indicated that she attempted to file an initial claim on November 25, 2023, but was unable to do so.

**CONCLUSIONS AND REASONS:** Claimant is eligible to backdate her initial claim to week 47-23.

OAR 471-030-0040 (January 11, 2018) provides:

(1) As used in these rules, unless the context requires otherwise:

\* \* \*

(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;

\* \* \*

(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.

(2) For the purposes of filing an initial, additional, or reopened claim:

\* \* \*

(d) When filed by Internet, the date of filing shall be the initial date of transmission of the online claim[.]

(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;

(b) A “non-compensable credit week” is a week of unemployment for which benefits [shall] will not be allowed but which may qualify as a week allowed toward satisfying a disqualification as provided in ORS 657.215.

(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.

\* \* \*

(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[.]

\* \* \*

Claimant filed a weekly claim (i.e., a “continued claim”) for benefits for week 47-28, the week at issue, which occurred prior to week 48-23, the FEW of her claim. Under OAR 471-030-0045(1)(a), a continued claim for benefits must follow the FEW of an initial, additional, or reopen claim, or a continued claim for the previous week. Because the week at issue occurred *prior* to the FEW of her claim, it could not *follow* the FEW. Therefore, the only way in which claimant could be eligible for benefits waiting week credit for the week at issue is if her initial claim was backdated to week 47-23.

Under OAR 471-030-0040(1)(e), “backdating” may be allowed, in relevant part, “based upon evidence of the individual's documented contact on the prior date with the Employment

Department[.]” The order under review concluded that neither the ALJ nor the Department had authority to backdate claimant’s initial claim, however, because “there are no good cause exceptions to the rules.” Order No. 24-UI-244835 at 2. While the order under review is correct that the rule does not explicitly provide for “good cause” exceptions, it errs in suggesting that backdating is entirely unavailable under the rule.

Both claimant’s testimony at hearing, and her written narrative included with the request for hearing, indicate that she attempted to file an initial claim on November 25, 2023. The record further shows that claimant recorded in her notes, after the unsuccessful attempt, that she was unable to do so because the system was temporarily unavailable. The Department stated in its attestation, “The system does not show that the claimant attempted to file a claim prior to 11-28-23.” Exhibit 1 at 3. It is not clear from this statement whether it is specifically meant to refer to claimant’s initial claim, or her *continued* claim for the week at issue. Given that the attestation also indicates that claimant filed her initial claim on November 27, 2023, it more likely than not refers to her filing of the continued claim for the week at issue the following day. As such, it does not contradict claimant’s assertion that she attempted to file her initial claim on November 25, 2023.

OAR 471-030-0040(1)(e) does not define what constitutes “evidence of the individual’s documented contact” that would suffice to allow backdating of the initial claim to the week in which the contact was made. Without guidance on the construction of that provision, it is reasonable to construe it liberally. Claimant’s testimony and written statement therefore constitute evidence of her documented contact, particularly as claimant personally documented the contact at the time she made it. Because the record contains evidence of claimant’s contact with the Department during week 47-23, and because claimant documented that contact, claimant is eligible to have her initial claim backdated to week 47-23.

Additionally, because week 47-23 is the correct FEW for claimant’s initial claim, claimant filed her continued claim for the week at issue in accordance with OAR 471-030-0045(1)(a) and (4), and is therefore not ineligible for benefits or waiting week credit for that week on the basis of having claimed a week of benefits which was prior to the FEW of her initial claim.

**DECISION:** Order No. 24-UI-244835 is set aside, as outlined above.

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

**DATE of Service: February 16, 2024**

**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.

**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.

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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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