

State of Oregon  
**Employment Appeals Board**  
875 Union St. N.E.  
Salem, OR 97311

*Modified*  
*Request for Hearing Allowed*  
*Ineligible Weeks 41-23 through 42-23*  
*Eligible Weeks 43-23 through 46-23*

**PROCEDURAL HISTORY:** On December 14, 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 October 8, 2023 through November 18, 2023 (weeks 41-23 through 46-23) and therefore was ineligible to receive unemployment insurance benefits for those weeks (decision # 131945). On January 2, 2024, claimant filed a request for hearing that the Department did not receive. On January 3, 2024, decision # 131945 became final without the Department having received a request for hearing from claimant. On April 3, 2024, claimant filed a late request for hearing on decision # 131945. On May 1, 2024, ALJ Blam conducted a hearing, and on May 2, 2024 issued Order No. 24-UI-253385, allowing claimant's January 2, 2024 request for hearing as timely, and affirming decision # 131945 on the merits. On May 21, 2024, 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.

EAB considered the entire hearing record. EAB agrees with the portion of Order No. 24-UI-253385 allowing claimant's request for hearing as timely filed. Pursuant to ORS 657.275(2), that portion of Order No. 24-UI-253385 is **adopted**. The remainder of this decision addresses the merits of decision # 131945.

**FINDINGS OF FACT:** (1) On October 3, 2023, claimant filed an initial claim for benefits, with a first effective week of October 1, 2023 through October 7, 2023 (week 40-23). Claimant filed a timely claim for benefits for week 40-23.

(2) On October 18, 2023, claimant attempted to file a weekly claim for the week of October 8, 2023 through October 14, 2023 (week 41-23) via the Department’s online claims system. The claims system did not allow claimant to file the weekly claim at that time, stating, “We are unable to restart your claim online because you indicated you were self-employed. Please contact us by using the ContactUs form on our website.” Transcript at 25. Despite this advisory, claimant did not attempt to contact the Department via their website at that time. Instead, claimant made multiple unsuccessful attempts to contact the Department by phone in order to resolve the issue.

(3) On October 30, 2023, claimant attempted to contact the Department via their website requesting assistance to reopen her claim, as instructed by the Department’s online claims system on October 18, 2023. Claimant’s message stated, “Hi there, I need help reopening my claim. I am self-employed but lost my full-time job and primary source of income on October 1st. Please let me know if there’s anything you need from me to get this taken care of. Thank you.” Transcript at 22. The Department’s system immediately sent claimant an automatic response requesting that claimant verify her identity so that Department staff could respond to her inquiry. Claimant did so, as instructed, that day. However, the Department never responded to claimant’s October 30, 2023 inquiry.

(4) On November 27, 2023, after having received no response from the Department, claimant again contacted the Department via their website. Claimant also spoke to a Department representative on the phone that day. On November 27, 2023, with the Department representative’s assistance, claimant restarted her claim and filed weekly claims for weeks 41-23 through 46-23. These are the weeks at issue. The Department did not pay claimant benefits for the weeks at issue.

**CONCLUSIONS AND REASONS:** Claimant filed late claims for benefits for the weeks at issue, and is not eligible for benefits for weeks 41-23 through 42-23. However, claimant is eligible for benefits for weeks 43-23 through 46-23.

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.

\* \* \*

On November 27, 2023, claimant filed weekly claims for the weeks at issue. None of the weeks at issue were the first effective week of claimant’s claim. Therefore, under OAR 471-030-0045(4), each of these weekly claims must have been filed within seven days of the end of the respective week being claimed, as follows:

<b>Week</b>	<b>Last date of week</b>	<b>Last date to timely claim week</b>
41-23	October 14, 2023	October 21, 2023

42-23	October 21, 2023	October 28, 2023
43-23	October 28, 2023	November 4, 2023
44-23	November 4, 2023	November 11, 2023
45-23	November 11, 2023	November 18, 2023
46-23	November 18, 2023	November 25, 2023

Because claimant did not file her weekly claims for any of the weeks at issue until after their respective timely-filing dates passed, all of those claims were late. The order under review concluded that claimant was not eligible for benefits for any of the weeks at issue because of the late-filed claims, as “there are no good cause exceptions in the laws and rules for failing to timely file a continued claim.” Order No. 24-UI-253385 at 5. While the order under review is correct that no such exception exists, claimant relied on the directions provided on October 18, 2023 by the Department on October 30, 2023 but due to an apparent Department error, the Department did not respond to the inquiry and claimant was prevented from timely filing the claims until the Department restarted claimant’s claim.

On October 18, 2023, claimant attempted to file a weekly claim for week 41-23, the first week at issue. The Department’s claims system did not allow claimant to file the claim because, due to her having reported that she was self-employed, it required her to reopen her claim by contacting the Department via the Department’s web contact form. Claimant initially tried to contact the Department by phone instead, was unsuccessful, and eventually used the web contact form on October 30, 2023, as instructed by the Department’s system. Claimant immediately received an automated response to her inquiry requesting that she verify her identification so that Department staff could respond to the inquiry. She did so, but never received a response from Department staff. Claimant heard nothing from the Department until nearly a month later, when she contacted the Department for a second time.

Had the Department’s system allowed claimant to file a weekly claim on October 30, 2023, she would have had the opportunity to file a timely claim for the preceding week (week 43-23), and would likely have done so. However, the claims system barred claimant from doing so until she contacted the Department to restart her claim. Because claimant could not reach the Department by phone to restart her claim, and received no response to her October 30, 2023 inquiry, she had no meaningful opportunity to do so. The order under review suggested that despite the need to restart the claim, claimant could have, but did not, “attempt to claim her weekly benefits in any other way, such as by calling them in, submitting them online, faxing them, or via the telephone system.” Order No. 24-UI-253385. However, the record reflects that the claims system barred claimant from filing her weekly claims online until she restarted her claim. On October 30, 2023, claimant followed the Department’s instructions by using the ContactUs form and due to an apparent error by the Department, the Department failed to timely respond to the October 30, 2023 inquiry and restart claimant’s claim so she could timely file weekly claims. Claimant could not file until the Department took action on her claim on November 27, 2023, after a second inquiry by claimant. Although claimant could have filed a claim by fax at her expense, the rule did not require her to do so and, in light of the advisory claimant was given when she tried to file a weekly claim on October 18, 2023, it would not have been reasonable for her to assume that the Department would accept a weekly claim from her, in any form, without first contacting them to reopen the claim. As such, the record shows that claimant had no meaningful opportunity to file a timely weekly claim for week 43-23, despite her efforts to do so, and therefore claimant is eligible for benefits for that week. Similarly, it can be presumed that had claimant been able to successfully reopen her claim and claim benefits on October 30, 2023, she would have been able to do so for the following three

weeks at issue as well, and would have done so. Claimant is therefore allowed benefits for weeks 43-23 through 46-23.

However, it was within claimant's control to contact the Department via their website, as the claims system advised her to do, on October 18, 2023. Her failure to do so was the result of her belief that using the contact form would be unsuccessful. While her inquiry sent on October 30, 2023 was unsuccessful, the fact that her inquiry sent on November 27, 2023 received a response from the Department suggests that the Department's failure to respond to her October 30, 2023 inquiry was an oversight, and not indicative of an overall futility in using the contact form. Had claimant sent an inquiry using the contact form on October 18, 2023, then, it is more likely than not that she would have been able to restart her claim that week and timely claim benefits for weeks 41-23 and 42-23. As such, claimant cannot be found eligible for benefits for those weeks.

For the above reasons, claimant is not eligible for benefits for weeks 41-23 through 42-23, and is eligible for benefits for weeks 43-23 through 46-23.

**DECISION:** Order No. 24-UI-253385 is modified, as outlined above.

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

**DATE of Service:** July 2, 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.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



# 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  
[www.Oregon.gov/Employ/eab](http://www.Oregon.gov/Employ/eab)

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