

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



Modified
Backdating of Initial Claim Allowed

PROCEDURAL HISTORY: On May 17, 2024, the Oregon Employment Department (the Department) served notice of a Wage and Potential Benefit Report (WPBR) concluding that claimant was eligible for an unemployment insurance claim with a weekly benefit amount of \$306 and a maximum benefit amount of \$7,956, based on claimant’s base year consisting of the first through fourth quarters of 2023 (decision # L0004173164). Claimant filed a timely request for hearing. On September 11, 2024, ALJ Scott conducted a hearing, and on September 18, 2024, issued Order No. 24-UI-266531, affirming decision # L0004173164. On October 7, 2024, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant submitted written arguments on October 7 and October 17, 2024. EAB considered both of claimant’s written arguments when reaching this decision.

Both of claimant’s arguments asserted that the hearing proceedings were unfair or the ALJ was biased. These assertions were based on a statement made by the ALJ after the close of testimony, in which she mused on what she saw as a “disconnect” between the volume of unemployment insurance claims filed with the Department and her personal, anecdotal experience with understaffing at businesses she patronizes. Claimant’s October 7, 2024, Written Argument at 1. Claimant suggested that this statement, while dismissed by the ALJ as “rhetorical,” evinced an underlying bias against unemployed people. Claimant’s October 7, 2024, Written Argument at 1. Claimant’s concern is understandable. EAB reviewed the hearing record in its entirety, and has determined that the ALJ inquired fully into the matters at issue and gave all parties reasonable opportunity for a fair hearing as required by ORS 657.270(3) and (4) and OAR 471-040-0025(1) (August 1, 2004).

FINDINGS OF FACT: (1) For the fourth quarter of 2022, claimant had reported wages of \$39,698.19, and 536 hours, with his then-employer Groundworks Services, Inc.

(2) In or around January 2023, claimant filed an initial claim for unemployment insurance benefits (“the prior benefit year”).

(3) In or around September 2023, claimant’s benefits for the prior benefit year exhausted, as the maximum benefit amount payable for that year had been paid. By practice, the Department typically mails letters to claimants explaining that their benefits have been exhausted.

(4) On September 14, 2023, claimant contacted the Department about his claim. The representative to whom he spoke advised claimant that his claim had exhausted, but that claimant could “restart” his claim “starting in January 2024.” Audio Record at 28:15.

(5) On January 14, 2024, claimant’s claim for the prior benefit year expired.

(6) On January 16, 2024, as a result of the Department representative’s advice to “restart” his claim in January 2024, claimant began “trying to reach” the Department for that purpose. Audio Record at 9:10. Around that time, claimant searched the Department’s website for information on how to “restart” his claim, but was unable to find that information. On January 29, 2024, claimant sent the Department a message asking for assistance in restarting his claim. Claimant received a response from the Department requesting answers to several questions, for the purpose of confirming his identity. Claimant responded to that message within a few minutes of receiving it, answering all of the questions it posed. *See Exhibit 2 at 2.* However, the Department did not further respond to claimant’s request for assistance.

(7) On February 26, 2024, claimant sent the Department a follow-up message, requesting an update on his inquiry from January 2024. The Department did not respond to claimant’s message.

(8) On April 16, 2024, claimant again followed up with the Department about his request to restart his claim. On April 26, 2024, claimant received a response from a Department representative, which stated, in relevant part, “I have reviewed your account, and I don’t see any issues with you restarting your claim.” Exhibit 2 at 3. This information was erroneous.

(9) After speaking with a colleague who had also been claiming benefits, claimant learned that he was not able to “restart” his now-expired claim for the prior benefit year, but that he instead needed to file a new initial claim. On May 15, 2024, claimant filed a new initial claim for benefits (“the current benefit year”). The Department determined that claimant’s base year for the current benefit year was the first through fourth quarters of 2023. Claimant’s wages reported for this base year were as follows:

Quarter	Employer	Wages	Hours
1 st Quarter 2023	Groundworks Services, Inc.	\$14,152.20	144
2 nd Quarter 2023	Deschutes Brewery	\$10,384.80	120
3 rd Quarter 2023	N/A	N/A	N/A
4 th Quarter 2023	N/A	N/A	N/A

Exhibit 1 at 4. Based on these wages, the Department determined that, for the current benefit year, claimant’s weekly benefit amount was \$306 and his maximum benefit amount was \$7,956.

(10) Had claimant filed an initial claim for the current benefit year in January 2024, the Department would have determined his base year to be the fourth quarter of 2022 through the third quarter of 2023.

(11) As of January 2024, the minimum and maximum weekly benefit amounts in Oregon were \$190 and \$812, respectively.¹

CONCLUSIONS AND REASONS: Claimant is eligible to backdate his initial claim to January 28, 2024.

ORS 657.010 states, in relevant part:

(1) “Base year” means the first four of the last five completed calendar quarters preceding the benefit year.

* * *

(3) “Benefit year” means a period of 52 consecutive weeks commencing with the first week with respect to which an individual files an initial valid claim for benefits, and thereafter the 52 consecutive weeks period beginning with the first week with respect to which the individual next files an initial valid claim after the termination of the individual’s last preceding benefit year except that the benefit year shall be 53 weeks if the filing of an initial valid claim would result in overlapping any quarter of the base year of a previously filed initial valid claim.

ORS 657.150 states, in relevant part:

(1) An individual shall be paid benefits for weeks during the benefit year in an amount that is to be determined by taking into account the individual’s work in subject employment in the base year as provided in this section.

(2)(a) To qualify for benefits an individual must have:

(A) Worked 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; and

(B) Have earned wages in subject employment equal to six times the individual’s weekly benefit amount in employment for service performed subsequent to the beginning of a preceding benefit year if benefits were paid to the individual for any week in the preceding benefit year.

(b) If the individual does not meet the requirements of paragraph (a)(A) of this subsection, the individual may qualify for benefits if the individual has worked a minimum of 500 hours in employment subject to this chapter during the base year.

* * *

¹ EAB has taken notice of these facts, which are generally cognizable facts. 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.

(4)(a) An eligible individual’s weekly benefit amount shall be 1.25 percent of the total wages paid in the individual’s base year. However, such amount shall not be less than the minimum, nor more than the maximum weekly benefit amount.

* * *

(d) All weekly benefit amounts, if not a multiple of \$1, shall be computed to the next lower multiple of \$1.

(5) Benefits paid to an eligible individual in a benefit year shall not exceed 26 times the individual’s weekly benefit amount, or one-third of the base year’s wages paid, whichever is the lesser. If such amount is not a multiple of \$1, it shall be computed to the next lower multiple of \$1.

OAR 471-030-0040 (January 11, 2018) states, in relevant part:

(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.

At issue in this matter is claimant’s contention that his initial claim for the current benefit year should be backdated to January 2024, as he had been attempting to contact the Department to “restart” his claim since that point. Because claimant did not actually file an initial claim for the current benefit year until May 2024, his base year was determined to be the first through fourth quarters of 2023, with a resulting weekly benefit amount of \$306 and a maximum benefit amount of \$7,956. By contrast, if claimant had filed an initial claim for the current benefit year in January 2024 (or any time during the first quarter of 2024), his base year would be the fourth quarter of 2022 through the third quarter of 2023. This would result in a significant increase in claimant’s weekly and maximum benefit amounts, as adding claimant’s fourth quarter 2022 wages to his base-year wages would make his total base-year wages \$64,235.19,

rather than \$24,537. Thus, claimant's weekly benefit amount would be \$802,² and his maximum benefit amount would be \$20,852.³

The order under review concluded, however, that claimant was not eligible to backdate his claim to January 2024, explaining:

Claimant argues that if the Department had responded to his inquiries in January 2024, he would have filed a new claim at that time and his base year would have started in the fourth quarter of 2022, essentially an estoppel argument. However, the elements of estoppel are not present—claimant did not rely to his detriment on bad advice that was given to him by a staff member with knowledge that the information was incorrect. Claimant relied on a mistaken notion that he had to “restart” the old claim rather than initiate a new claim.

At hearing, claimant was not able to establish how he developed the perception that he needed to “restart” an existing claim rather than to start a new claim. On the contrary, the evidence established that the Department notified claimant in September 2023 by letter that the old claim (initiated in January 2023) was exhausted; therefore, there was no viable existing claim to restart. Claimant was able to explain why he did not file a new claim in January 2024 (because he believed, mistakenly, that he had to restart his old claim and no such option was available on the website), but he did not provide any reasonable basis for his erroneous belief that he needed to “restart” an existing claim. He testified that the letter he received in September 2023 stated that he could restart his claim in January 2024; however, this testimony is clearly erroneous. The Department would not notify claimant of such an inaccuracy. As the Department representative testified at hearing, there was no existing claim to restart. The old claim was exhausted in September 2023 and expired on January 20, 2024.

Order No. 24-UI-266531 at 3. This discussion contains several points which are not supported by the record. First, the record does not establish that the Department sent claimant a letter in September 2023 at all. At hearing, the Department's witness testified, “when the balance exhausts to zero, we will send out a letter telling you that your balance has exhausted.” Audio Record at 16:35. This testimony merely established that the Department, by practice, typically sends out such letters. The Department's witness did not, however, testify that the Department actually sent claimant such a letter in September 2023. Testimony explaining the Department's typical practices, by itself, is insufficient to establish that the Department acted in accordance with their practices in this particular circumstance.

Likewise, the Department failed to produce a copy of any such letter allegedly sent to claimant in September 2023, and a review of the Department's records yielded neither a copy of the letter itself nor any indication that the Department sent such a letter to claimant at that time. Furthermore, the order under review erred in stating that claimant testified to receiving such a letter. In fact, claimant did not testify as to whether he received such a letter. In short, the record lacks any evidence to show either that the Department sent a letter to claimant advising him of his claim for the prior benefit year having been exhausted or that claimant received such a letter. Thus, the only evidence in the record regarding any

² $\$64,235.19 \times 0.125 = \802.94 , which, rounded down to the nearest dollar, is \$802.

³ $\$64,235.19 \div 3 = \$21,411.73$. $\$802 \times 26 = \$20,852$. Because $\$20,852 < \$21,411.73$, \$20,852 is the correct maximum benefit amount.

advisories given to claimant in September 2023 consists of the conflicting accounts of claimant's September 14, 2024, phone call to the Department.

At hearing, claimant testified that the Department representative to whom he spoke on September 14, 2023, advised him that his claim balance had exhausted and that he could "restart" his claim in January 2024. Audio Record at 28:15. By contrast, the Department's witness testified that the representative advised claimant that his claim balance had exhausted and "provided [claimant] a date of when [he] needed to file a new claim." Audio Record at 15:40. The Department's witness used third-person pronouns when referring to the representative to whom claimant spoke on September 14, 2023. Thus, it can be reasonably inferred that the Department's witness was not the person to whom claimant spoke in September 2023, but was instead testifying about a conversation for which she was not present. As such, the Department's testimony on this conversation is hearsay, which is entitled to less weight than claimant's first-hand account, and the facts have been found accordingly.

Moreover, the record shows other instances in which the claimant was provided erroneous information consistent with claimant's account, in writing. For example, on April 26, 2024, a Department representative erroneously informed claimant, in relevant part, "I have reviewed your account, and I don't see any issues with you restarting your claim." Exhibit 2 at 3. Given these findings, the record in fact does show that claimant had a "reasonable basis for his erroneous belief that he needed to 'restart' an existing claim": that the Department advised him to do so. Had the Department correctly informed claimant that he would be required to file a new initial claim when he spoke to them in September 2023, claimant would have been prepared to do so when the time came in January 2024. Instead, claimant, acting on misinformation given to him by the Department, attempted to "restart" his then-expired claim for the prior benefit year in January 2024. As it was not possible for him to do so, claimant's efforts to restart his claim were thwarted.

The doctrine of equitable estoppel "requires proof of a false representation, (1) of which the other party was ignorant, (2) made with the knowledge of the facts, (3) made with the intention that it would induce action by the other party, and (4) that induced the other party to act upon it." *Keppinger v. Hanson Crushing, Inc.*, 161 Or App 424, 428, 983 P2d 1084 (1999) (citation omitted). In addition, to establish estoppel against a state agency, a party "must have relied on the agency's representations and the party's reliance must have been reasonable." *State ex rel SOSOC v. Dennis*, 173 Or App 604, 611, 25 P3d 341, rev den, 332 Or 448 (2001) (citing *Dept. of Transportation v. Hewett Professional Group*, 321 Or 118, 126, 895 P2d 755 (1995)).

Claimant's circumstances, above, meet all of the required elements of equitable estoppel. The representative made a false representation to claimant: that he could "restart" his claim for the prior benefit year in January 2024, rather than filing a new initial claim. Claimant's actions in trying to "restart" the claim for the prior benefit year evince his ignorance at the time as to what he was actually required to do in January 2024. The representative to whom claimant spoke in September 2023 did not appear at the hearing, and therefore did not testify as to whether they were aware of the inaccuracy of their advice to claimant. Nevertheless, it is more likely than not that they were aware of the actual process that claimant needed to complete, given the impossibility of what they advised claimant to do, but misspoke, thereby giving claimant incorrect advice. Likewise, it can be reasonably inferred that the representative gave claimant that advice with the intention that claimant would follow that advice. The record shows that claimant actually was induced to act on that advice. Thus, relying upon the only

advice that the Department gave him in this regard, claimant attempted, in vain, to “restart” his claim in January 2024. Because the representative was an agent of the Department, it was reasonable for claimant to rely upon the representative’s statements. Had he not done so, it can be reasonably inferred that he would have instead filed a new initial claim at that time, rather than waiting until May 2024 to do so. As such, claimant’s failure to file a new initial claim in January 2024 was the result of his detrimental reliance on the Department’s misinformation, and claimant is therefore entitled to backdate his initial claim to the time when, but for the misinformation the Department gave him, he would have actually filed a new initial claim.

Furthermore, claimant’s efforts to contact the Department for help in the matter went unanswered over the course of several months. The first documented date of claimant’s attempts to contact the Department is January 29, 2024, when claimant sent the Department a message asking for assistance in restarting his claim. Had the Department responded to the substance of claimant’s request for help at that time, and done so correctly, it stands to reason that they would have corrected his mistaken belief that he needed to “restart” his claim and then advised him to file a new initial claim. It is therefore appropriate, under OAR 471-030-0040(1)(e), to backdate claimant’s initial claim for the current benefit year to January 28, 2024, the beginning of the week in which claimant had documented contact with the Department.⁴

As explained above, because claimant is eligible to backdate his initial claim to January 2024, the correct base year for the current benefit year is the fourth quarter of 2022 through the third quarter of 2023. Accordingly, claimant’s weekly benefit amount for the current benefit year is \$802, and his maximum benefit amount is \$20,852.

DECISION: Order No. 24-UI-266531 is modified, as outlined above.

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

DATE of Service: October 25, 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. 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.

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.

⁴ An initial claim is effective the Sunday of the calendar week in which it is filed. OAR 471-030-0040(3).



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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