

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0796

Affirmed
Ineligible Weeks 01-22 through 04-22 and 06-22 through 18-22

PROCEDURAL HISTORY: On May 3, 2024, the Department served notice of an administrative decision concluding that claimant filed late claims for benefits for the weeks of February 6, 2022, through May 7, 2022 (weeks 06-22 through 18-22) and was therefore denied benefits for those weeks (decision # L0003970642). Also on May 3, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant filed late claims for unemployment insurance benefits for the weeks of January 2, 2022, through January 29, 2022 (weeks 01-22 through 04-22) and was therefore denied benefits for those weeks (decision # L0003987996). Claimant filed timely requests for hearing on both decisions. On October 25, 2024, ALJ Janzen conducted a consolidated hearing and issued Orders No. 24-UI-270856 and 24-UI-270860, affirming decisions # L0003970642 and L0003987996, respectively. On November 12, 2024, claimant filed applications for review of both orders with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 24-UI-270856 and 24-UI-270860. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2024-EAB-0796 and 2024-EAB-0797).

WRITTEN ARGUMENT: EAB considered claimant's argument in reaching this decision.

FINDINGS OF FACT: (1) On November 17, 2021, claimant filed an initial claim for unemployment insurance benefits. The Department determined the claim to be monetarily valid.

(2) On January 30, 2024, claimant filed weekly claims for benefits for the weeks of January 2, 2022, through January 29, 2022 (weeks 01-22 through 04-22) and February 6, 2022, through May 7, 2022 (weeks 06-22 through 18-22). These are the weeks at issue. The Department did not pay claimant benefits for the weeks at issue.

(3) Claimant did not file claims for each of the weeks at issue within seven days of the end of the week because he contracted COVID-19 in January 2022 and was too ill to file, then felt that he had to speak with a Department representative before filing claims for the weeks he was ill or weeks thereafter.

Claimant was also pursuing an appeal of one or more eligibility issues on the claim and mistakenly believed that he could, or was required to, wait until that appeal was resolved before claiming additional weeks of benefits.

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

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

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

(a) “Claimant” is an individual who has filed an initial, additional, or reopened claim for unemployment insurance purposes within a benefit year or other eligibility period;

(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;

(c) “Additional claim” is a claim certification by a claimant completed as required by OAR 471-030-0025 that restarts a claim during an existing benefit year or other eligibility period and certifies to the end of a period of employment;

(d) “Reopened claim” is a certification by a claimant completed as required by OAR 471-030-0025 that restarts a claim during an existing benefit year or other eligibility period and certifies that there was no employment in any week since last reporting on this claim;

(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:

(a) 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) 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) 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) When filed by Internet, the date of filing shall be the initial date of transmission of the online claim; or

(e) When filed by telephone, the date of filing shall be the date recorded in the completed telephone initial claim record of the agency system or by an employee completing the filing of the claim record.

(f) An incomplete certification must be completed and returned within seven business days from the date of notification that the original was incomplete to preserve the original date of filing.

(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;

* * *

(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, 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.

* * *

Claims for each of the weeks at issue, the last of which ended on May 7, 2022, were due no later than seven days following the end of each of those weeks. Claimant did not rebut the Department’s assertion that he filed claims for benefits for each of the weeks at issue on January 30, 2024. Audio Record at 13:44. Therefore, the claims were filed late.

Claimant gave several reasons for the late filings. In January 2022, claimant contracted COVID-19 and asserted that it was not “physically possible” to file claims. Audio Record at 15:24. Claimant similarly failed to file claims in March 2022 while he underwent and recovered from surgery. Audio Record at 19:57. When claimant recovered from COVID-19, he attempted to file claims for the weeks he was ill and was therefore prompted by the filing system to reopen his claim. Audio Record at 16:00. Claimant did not file any claims at that time due to mistakenly believing that he was erroneously being asked to file a new initial claim rather than reopening his existing claim. Audio Record at 22:52. Claimant therefore desired to speak with a Department representative for an explanation and assistance filing the weekly claims, but was unable to reach anyone despite numerous attempts. Claimant was also pursuing an appeal of an eligibility issue at the time, which was ultimately resolved in his favor, but he testified that he thought he had to wait for that favorable resolution before claiming benefits during the time the appeal was pending. Audio Record at 17:50.

While claimant believed that he had valid reasons for not filing claims for the weeks at issue within seven days following the end of each of those weeks, OAR 471-030-0045(4) does not contain any “good cause” exception for failing to timely file claims. Therefore, no matter how compelling claimant’s reasons were, the rules do not allow for the payment of benefits because the claims were filed late.

For these reasons, claimant filed late claims for unemployment insurance benefits for the weeks of January 2, 2022, through January 29, 2022 (weeks 01-22 through 04-22) and February 6, 2022, through May 7, 2022 (weeks 06-22 through 18-22), and is therefore ineligible to receive benefits for those weeks.

DECISION: Orders No. 24-UI-270856 and 24-UI-270860 are affirmed.

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

DATE of Service: December 17, 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 stated above.** See ORS 657.282. For forms and information, visit <https://www.courts.oregon.gov/courts/appellate/forms/Pages/appeal.aspx> and choose the appropriate form under “File a Petition for Judicial Review.” You may also contact the Court of Appeals by telephone at (503) 986-5555, by fax at (503) 986-5560, or by mail at 1163 State Street, Salem, Oregon 97301.

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>. If you are unable to complete the survey online and wish to have 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 محكمة 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.

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