

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0042

Orders No. 25-UI-279348 and 25-UI-279345 Modified ~ Requests to Reopen Allowed
Orders No. 25-UI-279350, 25-UI-279346, 25-UI-279342, and 25-UI-279337 Reversed
Eligible Weeks 36-24 through 41-24

PROCEDURAL HISTORY: On November 6, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant filed a late claim for unemployment insurance benefits for the week of September 1, 2024, through September 7, 2024 (week 36-24) and was therefore ineligible to receive benefits for that week (decision # L0007017261). Also on November 6, 2024, the Department served notice of an administrative decision concluding that claimant filed a late claim for benefits for the week of September 8, 2024, through September 14, 2024 (week 37-24) and was therefore ineligible to receive benefits for that week (decision # L0007136609). Also on November 6, 2024, the Department served notice of an administrative decision concluding that claimant filed a late claim for benefits for the week of September 15, 2024, through September 21, 2024 (week 38-24) and was therefore ineligible to receive benefits for that week (decision # L0007018929). Also on November 6, 2024, the Department served notice of an administrative decision concluding that claimant filed a late claim for benefits for the week of September 22, 2024, through September 28, 2024 (week 39-24) and was therefore ineligible to receive benefits for that week (decision # L0007113482). Also on November 6, 2024, the Department served notice of an administrative decision concluding that claimant filed a late claim for benefits for the week of September 29, 2024, through October 5, 2024 (week 40-24) and was therefore ineligible to receive benefits for that week (decision # L0007099745). Also on November 6, 2024, the Department served notice of an administrative decision concluding that claimant filed a late claim for benefits for the week of October 6, 2024, through October 12, 2024 (week 41-24) and was therefore ineligible to receive benefits for that week (decision # L0007026282). Claimant filed a timely request for hearing on each decision.

On November 13, 2024, notice was mailed to claimant that a consolidated hearing on decisions # L0007017261 and L0007018929 had been scheduled for December 2, 2024. On December 2, 2024, claimant failed to appear for the hearing, and ALJ Frank issued Orders No. 24-UI-275197 and 24-UI-275195, dismissing claimant's requests for hearing on decisions # L0007017261 and L0007018929, respectively, due to her failure to appear. On December 10, 2024, claimant filed timely requests to reopen the December 10, 2024, hearing.

On January 8, 2025, ALJ Frank conducted a consolidated hearing on all six matters. On January 10, 2025, ALJ Frank issued Orders No. 25-UI-279348 and 25-UI-279345, allowing claimant's requests to reopen, cancelling Orders No. 24-UI-275197 and 24-UI-275195, and affirming decisions # L0007017261 and L0007018929, respectively, on the merits. Also on January 10, 2025, ALJ Frank issued Orders No. 25-UI-279350, 25-UI-279346, 25-UI-279342, and 25-UI-279337, affirming decisions # L0007136609, L0007113482, L0007099745, and L0007026282, respectively. On January 14, 2025, claimant filed applications for review of Orders No. 25-UI-279348, 25-UI-279345, 25-UI-279350, 25-UI-279346, 25-UI-279342, and 25-UI-279337 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 25-UI-279348, 25-UI-279345, 25-UI-279350, 25-UI-279346, 25-UI-279342, and 25-UI-279337. For case-tracking purposes, this decision is being issued in sextuplicate (EAB Decisions 2025-EAB-0038, 2025-EAB-0037, 2025-EAB-0040, 2025-EAB-0042, 2025-EAB-0041, 2025-EAB-0039).

EAB considered the entire consolidated hearing record, including witness testimony and any exhibits admitted as evidence. EAB agrees with the parts of Orders No. 25-UI-279348 and 25-UI-279345 allowing claimant's requests to reopen the December 2, 2024, hearing. Those parts of Orders No. 25-UI-279348 and 25-UI-279345 are **adopted**. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) On June 13, 2024, claimant filed an initial claim for unemployment insurance benefits that the Department determined was monetarily valid.

(2) On October 10, 2024, claimant requested by telephone to reopen her claim effective July 21, 2024 (week 30-24). The Department approved the request and internally set a deadline of October 17, 2024, for claimant to file continued claims for the weeks of July 21, 2024, through October 5, 2024 (weeks 30-24 through 40-24). The representative who approved claimant's request to backdate the reopened claim to July 21, 2024, did not advise claimant of the October 17, 2024, deadline.

(3) On October 15, 2024, claimant filed continued claims for the weeks of July 21, 2024, through August 31, 2024 (weeks 30-24 through 35-24) using Frances Online.

(4) On October 16, 2024, claimant logged into Frances Online to file continued claims for the weeks of September 1, 2024, through October 12, 2024 (weeks 36-24 through 41-24), but discovered she had misplaced work search information needed to complete the claim forms and therefore did not attempt to file the claims at that time.

(5) At some point on or after October 16, 2024, claimant located the work search information and logged into Frances Online to file continued claims for weeks 36-24 through 41-24. The system would not allow claimant to file continued claims for these weeks. Claimant thereafter made several attempts to contact the Department by telephone without success, and visited a WorkSource office, but was unable to speak with any representative that could resolve the issue. Ultimately, claimant sent an electronic message to the Department requesting assistance in filing these claims.

(6) On October 29, 2024, the Department responded to claimant's message, and arranged a telephone call later that day during which claimant filed continued claims for weeks 36-24 through 41-24.

CONCLUSIONS AND REASONS: Claimant is eligible to receive benefits for weeks 36-24 through 41-24 despite the claims for those weeks having been filed late.

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

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

* * *

(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.

* * *

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, 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.

(5) The Director may, with respect to individual claimants or groups of claimants, direct that continued claims be filed on any reporting schedule appropriate to existing facilities and conditions.

* * *

Under OAR 471-030-0045(4), the continued claims for weeks 36-24 through 41-24 were due seven days following the end of each respective week. However, the Department's representative testified that on October 10, 2024, claimant requested to reopen her claim by telephone and that the reopening be backdated to July 21, 2024, which the Department allowed. Audio Record at 20:46. The representative further testified that as a matter of policy, the Department extended the deadline for claimant to file continued claims to October 17, 2024 with respect to the unclaimed weeks where the OAR 471-030-0045(4) deadline had already passed or was in less than seven days.¹ Audio Record at 25:10. Claimant filed the continued claims for weeks 36-24 through 41-24 on October 29, 2024, more than seven days after the end of week 41-24, and after the extended October 17, 2024 deadline applicable to weeks 36-24 through 40-24.² The continued claims for weeks 36-24 through 41-24 were therefore filed late.

The orders under review concluded that each continued claim for weeks 36-24 through 41-24 was filed after the applicable deadline for that week, and claimant was therefore ineligible to receive benefits for those weeks. Orders No. 25-UI-279348 at 4; 25-UI-279345 at 4, 25-UI-279350 at 2, 25-UI-279346 at 2, 25-UI-279342 at 2, and 25-UI-279337 at 2. The record supports that each of these claims was filed late.

¹ It can reasonably be inferred that the Department extended the filing deadline under the authority of OAR 471-030-0045(5). Further, the representative's testimony is reasonably understood to mean that the Department did so only with respect to weeks where the deadline had already passed or, with respect to the week of September 29, 2024 through October 5, 2024 (week 40-24), where the standard deadline would give claimant fewer than seven days from allowance of the reopening and backdating requests to file the claim.

² On October 10, 2024, a continued claim could not yet have been filed for the week of October 6, 2024 through October 12, 2024 (week 41-24) because that week had not yet ended. It can therefore be inferred that the Department did not use its OAR 471-030-0045(5) authority to extend the filing deadline for that week.

However, the record shows that the Department's actions prevented claimant from timely filing the claims, and claimant should therefore not be denied benefits because they were filed late.

While claimant was constructively on notice of the standard seven-day deadline for filing continued claims by virtue of OAR 471-030-0045(4), that deadline was inapplicable to claimant's claims for weeks 36-24 through 40-24 because the Department imposed an alternate deadline under its OAR 471-030-0045(5) authority for those weeks. Claimant largely agreed with the Department representative's testimony regarding the claim history through the October 10, 2024, allowance of claimant's request to reopen her claim with a backdated effective date of July 21, 2024. Claimant testified that the representative who assisted her on October 10, 2024, failed to tell her that the Department had set a deadline by which to file continued claims for weeks 36-24 through 40-24, and the Department failed to rebut this testimony. Audio Record at 30:55. The record therefore does not show that claimant knew or should have known of the alternate deadline. Denying claimant benefits for having failed to file her continued claims by the alternate deadline without providing notice of that deadline fails to comport with requirements of due process.³ Therefore, with respect to claimant's continued claims for weeks 36-24 through 40-24, claimant is eligible to receive benefits despite the claims being filed late.

With respect to week 41-24, the standard seven-day claim filing deadline under OAR 471-030-0045(4) applies and, as discussed above, claimant knew or should have known of this deadline. Claimant filed her continued claim for week 41-24 on October 29, 2024, after the October 19, 2024, filing deadline. However, for the reasons discussed below, it is more likely than not that claimant was unable to file a continued claim for week 41-24 on or before October 19, 2024, without the Department's assistance, and the Department failed to make such assistance reasonably available to her.

As of October 19, 2024, claimant had not filed continued claims for weeks 36-24 through weeks 40-24, for reasons discussed above. Claimant testified that after locating the information needed to file the continued claims for weeks 36-24 through 41-24, she used Frances Online to attempt to file the claims but the options to file for those weeks "were gone." Audio Record at 31:30. It can reasonably be inferred from these facts that even if the Department's computer or telephone systems had given claimant the option to attempt to file a claim for week 41-24 on her own at that time, the system would have incorrectly rejected it as an attempt to file an additional or reopened claim, rather than a continued claim, due to the perceived gap in weeks claimed. Therefore, it can reasonably be inferred that until the claims for week 36-24 through 40-24 were filed, claimant was prevented from filing a continued claim for week 41-24 without the assistance of a Department representative. As discussed above, the reasons claimant had not filed claims for weeks 36-24 through 40-24 by October 19, 2024, amounted to a denial of claimant's right to due process. These circumstances, in turn, prevented claimant from filing a timely continued claim for week 41-24 without the Department's assistance.

Claimant testified that she telephoned the Department for "several days" after discovering her inability to file claims for weeks including week 41-24 using Frances Online, and each time was disconnected or put on hold without being able to speak to a representative. Audio Record at 31:40. Claimant also visited a WorkSource office without resolution of the issue. The claim for week 41-24 was ultimately filed on October 29, 2024, in a telephone call with a Department representative, and it can reasonably be inferred

³ See U.S. Const. amend. XIV, §1 which provides, in relevant part, "[N]or shall any State deprive any person of . . . property, without due process of law[.]"

from this series of events that assistance from a representative was required to file the claim. The barriers to claimant filing a timely continued claim for week 41-24, which included preventing claimant from filing the claim without the Department's assistance and failing to provide timely and reasonable access to such assistance, were attributable to the Department. Therefore, a denial of benefits based on the late filing would, as with weeks 36-24 through 40-24, fail to comport with requirements of due process. Accordingly, with respect to claimant's continued claim for week 41-24, claimant is eligible to receive benefits despite the claim being filed late.

For these reasons, claimant's claims for unemployment insurance benefits for weeks 36-24 through 41-24 were filed but late, but claimant is eligible to receive benefits for those weeks, if otherwise eligible.

DECISION: Orders No. 25-UI-279348 and 25-UI-279345 are modified, as outlined above. Orders No. 25-UI-279350, 25-UI-279346, 25-UI-279342, and 25-UI-279337 are affirmed.

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

DATE of Service: February 18, 2025

NOTE: This decision reverses the ALJ's order denying claimant benefits. Please note that in most cases, payment of benefits owed will take about a week for the Department to complete.

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.

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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

ເອົាໃຈໃສ່ – ຄໍາຕັດສິນນີ້ມີຜົນກະທົບຕໍ່ກັບເງິນຊ່ວຍເຫຼືອການຫວ່າງງານຂອງທ່ານ. ຖ້າທ່ານບໍ່ເຂົ້າໃຈຄໍາຕັດສິນນີ້, ກະລຸນາຕິດຕໍ່ຫາຄະນະກຳມະການອຸທອນການຈ້າງງານໃນທັນທີ. ຖ້າທ່ານບໍ່ເຫັນດີນຳຄໍາຕັດສິນນີ້, ທ່ານສາມາດຍື່ນຄໍາຮ້ອງຂໍການທົບທວນຄໍາຕັດສິນນຳສານອຸທອນລັດ Oregon ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

Arabic

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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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