

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0452

Order No. 25-UI-297161 Affirmed ~ Request to Backdate Additional Claim Denied
Orders No. 25-UI-297130 and 25-UI-297129 Reversed ~ Eligible Weeks 39-24 and 40-24

PROCEDURAL HISTORY: On November 22, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision denying claimant's request to backdate his additional claim to October 6, 2024 (decision # L0007287935).¹ Also on November 22, 2024, the Department served notice of an administrative decision denying claimant's late claim for benefits for the week of September 22, 2024 through September 28, 2024 (week 39-24) (decision # L0007363674). Also on November 22, 2024, the Department served notice of an administrative decision denying claimant's late claim for benefits for the week of September 29, 2024 through October 5, 2024 (week 40-24) (decision # L0007310591). Claimant filed timely requests for hearing. On June 30, 2025, ALJ Monroe conducted a consolidated hearing on all three administrative decisions,² and on July 10, 2025, issued Orders No. 25-UI-297161, 25-UI-297129, and 25-UI-297130, affirming decisions # L0007287935, L0007363674, and L0007310591, respectively. On July 25, 2025, claimant filed applications for review of Orders No. 25-UI-297161, 25-UI-297129, and 25-UI-297130 with the Employment Appeals Board (EAB).

EAB combined its review of Orders No. 25-UI-297161, 25-UI-297129, and 25-UI-297130 under OAR 471-041-0095 (October 29, 2006). For case-tracking purposes, this decision is being issued in triplicate (EAB Decisions 2025-EAB-0451, 2025-EAB-0453, and 2025-EAB-0452).

¹ Decision # L0007287935 denied claimant's request to backdate his "restart." Under OAR 471-030-0040(1) (January 11, 2018), claims for benefits can be restarted by filing either an "additional claim" or "reopened claim," depending on whether the claimant was employed between when they last filed weekly claims for benefits and when they restarted their claim. As Order No. 25-UI-297161 explained, although the Department referred to claimant's restart request as an additional claim, the record contains conflicting information as to whether claimant's request should be considered an additional or reopened claim. Order No. 25-UI-297161 at 4, FN1. For the sake of clarity, however, and as the outcome of the backdating request does not depend on how which type of restart claimant requested, this decision refers to the requested restart as an additional claim.

² The consolidated hearing also addressed four other administrative decisions which denied claimant's late claims for benefits for four additional weeks. See UI Cases No. 2024-UI-28566, 2024-UI-28567, 2024-UI-28570, 2024-UI-28571. Department records show that claimant prevailed in those matters and therefore did not file applications for review of the ALJ orders allowing him benefits for those weeks. As such, those matters are not at issue here and not addressed further.

FINDINGS OF FACT: (1) On August 27, 2024, claimant filed an initial claim for unemployment insurance benefits. The Department determined claimant's claim to be monetarily valid. In early September 2024, claimant received from the Department a Wage and Potential Benefit Report (WPBR) indicating that his weekly benefit amount (WBA) was determined to be less than \$500. The WPBR included an advisory that stated, "Remember to file a weekly claim each week while we wait for more information. If you do not file weekly claims we cannot pay for your benefits for those weeks even if we approve your claim." Transcript at 12. Claimant did not begin filing weekly claims at that time.

(2) Claimant believed that some of his wages had not been included in the calculation of his WBA, resulting in a WBA that was lower than it should have been. Thereafter, claimant attempted to contact the Department several times to request that his WBA be redetermined. In or around the second week of September 2024, claimant successfully reached a Department representative, to whom claimant explained his concerns about the WBA amount. The representative told claimant that he believed claimant's WBA was too low, and advised claimant not to begin claiming benefits until his WBA was redetermined correctly. Based on this advice, claimant continued to refrain from claiming weekly benefits. He did so despite having read the advisory in the WPBR, as he believed that the advice of a Department representative was more reliable than a printed advisory. Had the representative not so advised claimant, claimant would have started filing weekly claims at that point.

(3) Throughout September, October, and November 2024, claimant contacted the Department on multiple occasions, regarding both the redetermination of his WBA and other unrelated matters, such as verifying his identity. On several of these occasions, claimant told the representatives with whom he interacted that he had been previously advised not to file weekly claims until the redetermination matter had been settled. None of these representatives explicitly told claimant that he should, in fact, have been filing weekly claims, until November 19, 2024. On that date, claimant spoke to a representative on the telephone and explained the reason he had not been filing weekly claims up to that point.

(4) The representative on November 19, 2024 corrected claimant's mistaken belief by advising him to start filing weekly claims, and took claimant's weekly claims for the weeks of August 25, 2024 through October 5, 2024 (weeks 35-24 through 40-24). The last two of these weeks, September 22, 2024 through October 5, 2024 (weeks 39-24 and 40-24) are the two weeks at issue. The Department did not pay claimant benefits for the weeks at issue.

(5) Claimant also requested during the November 19, 2024 call that the representative restart his claim by backdating it to October 6, 2024, so that claimant could claim benefits for the weeks of October 6, 2024 through November 9, 2024 (weeks 41-24 through 45-24).³ The representative was unable to backdate claimant's restart (i.e., his additional claim) to October 6, 2024, and instead backdated it to November 10, 2024. The Department later denied claimant's request to backdate his additional claim to October 6, 2024.

(6) On or around December 13, 2024, claimant's WBA was redetermined to be \$759, which claimant believed to be correct.

³ The record does not show that claimant actually claimed benefits for weeks 41-24 through 45-24. Therefore, claimant's eligibility for benefits for those weeks are not at issue in this decision. Instead, this decision addresses only claimant's eligibility for benefits for the two weeks at issue, and whether he was entitled to backdate his additional claim to October 6, 2024.

CONCLUSIONS AND REASONS: Claimant's request to backdate his additional claim to October 6, 2024, is denied. Claimant is eligible to receive benefits for weeks 39-24 and 40-24, despite the claims for those weeks having been filed late.

Backdating of Additional Claim. 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;

(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.

* * *

(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.

* * *

The Department denied claimant's November 19, 2024 request to backdate his additional claim to October 6, 2024. Under OAR 471-030-0040(3), the Department was authorized on that date to backdate his additional claim to the week preceding the request, the week of November 10, 2024, which it did.

Under OAR 471-030-0040(1)(e), the Department would have been authorized to backdate claimant's additional claim to an earlier date, such as the date claimant requested, if it had "evidence of the individual's documented contact on the prior date." It is reasonable to construe this provision to apply to a documented contact on the prior date on which the individual had requested, or had attempted to request, that the Department restart their claim. Here, however, although claimant contacted the Department multiple times in September, October, and November 2024, the record does not show that he requested or attempted to request to restart his claim before November 19, 2024. Therefore, claimant's additional claim cannot be backdated to October 6, 2024 under OAR 471-030-0040(1)(e).

Although the record does not explicitly show why claimant did not attempt to restart his claim prior to November 19, 2024, it can be reasonably inferred that he did not do so, at least in part, because of the previous advice he had received to refrain from claiming weekly benefits until his WBA could be redetermined. As discussed in the following section, claimant relied on this advice to his detriment, thus invoking the doctrine of equitable estoppel regarding the late claims for benefits for the weeks at issue. However, the record does not show that the doctrine applies to claimant's backdating request.

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 prove 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 SOSCF 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)).

Here, the record does not show that a representative of the Department ever advised claimant not to file an additional claim for the week of October 6, 2024 or any week thereafter. As such, claimant could not have relied on such advice in failing to timely file an additional claim for that week. Therefore, the Department did not make a false representation upon which claimant relied in failing to file a timely additional claim, and is not estopped from denying claimant's request to backdate his additional claim to October 6, 2024.

To be clear, it is understandable that claimant might not have believed it prudent or necessary to file an additional claim at that point, acting as he was on the other incorrect advice that the Department representative had given him about filing weekly claims. However, there is no "good cause" exception to the requirements under OAR 471-030-0040. Therefore, because the rules do not permit the Department to backdate claimant's additional claim in these circumstances, and because the Department is not estopped from denying claimant's request, claimant is not eligible to backdate his additional claim to October 6, 2024.

Late Claims for Benefits. ORS 657.155(1)(b) provides that an unemployed individual shall be eligible to receive benefits with respect to any week only if the individual has made a claim for benefits with respect to such week following ORS 657.260. ORS 657.260(1) provides that claims for benefits shall be filed in accordance with such regulations as the Department may prescribe. OAR 471-030-0045 (January 11, 2018) provides, in relevant part:

(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[.]

* * *

(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[.]

* * *

The weeks at issue in this case are the weeks of September 22, 2024 through September 28, 2024 (week 39-24) and September 29, 2024 through October 5, 2024 (week 40-24). As neither of the weeks at issue were the first effective week, the claims for each week were due no later than seven days after the weeks ended. Thus, to be timely, the claim for week 39-24 must have been filed no later than October 5, 2024, and the claim for week 40-24 must have been filed no later than October 12, 2024. Because claimant did not file his claim for either week until November 19, 2024, the weekly claims were late.

Orders No. 25-UI-297130 and 25-UI-297129 denied claimant’s late claims for benefits for the weeks at issue, explaining, in relevant part:

Despite claimant’s understandable explanation for the untimely filing, the rule does not contain a “good cause” exception that authorizes the Department—or an administrative law judge—to grant benefits for a claim filed beyond the requisite seven-day deadline under the circumstances described at hearing.

Order No. 25-UI-297130 at 4; Order No. 25-UI-297129 at 4. While the orders under review are correct that the rule does not contain a “good cause” exception, the Department must nevertheless pay claimant benefits for the weeks at issue under the doctrine of equitable estoppel.

In or around mid-September 2024, claimant spoke to a Department representative whom, upon learning that claimant’s weekly benefit amount appeared to be incorrect, advised claimant not to begin claiming benefits until his WBA was redetermined correctly. Claimant followed this advice and refrained from claiming weekly benefits, despite having read the advisory in the WPBR, as he believed that the advice of a Department representative was more reliable than a printed advisory. The record shows that

claimant would have started filing weekly claims at that point if he had not been so advised. These facts meet the requirements of the doctrine of equitable estoppel.

First, the Department representative made a false representation to claimant by saying that claimant should not claim weekly benefits while waiting for a redetermination of his WBA, contrary to what is required for continued claims under OAR 471-030-0045. Although the record does not explicitly show what the representative knew about the requirements under that rule, more likely than not he either knew or had reason to know of those requirements, but disregarded them when advising claimant to refrain from filing weekly claims. It can also be reasonably inferred that the advice the representative gave claimant was specifically intended to convince claimant to act according to that advice, and the record shows that claimant did, in fact, act on that advice. Similarly, claimant relied on that advice in believing that refraining from filing weekly claims at that time was the correct course of action, and the reason he did so—believing that a Department representative would understand what to do in the circumstances better than a printed advisory—was reasonable, even if incorrect.

Thus, claimant reasonably relied on the Department representative's incorrect advice to refrain from filing weekly claims until his WBA could be redetermined. But for his reliance on this advice, claimant would have filed timely claims for the weeks at issue. As such, the Department is estopped from denying claimant's weekly claims for the weeks at issue, and claimant is allowed benefits for those weeks, if otherwise eligible.

DECISION: Order No. 25-UI-297161 is affirmed. Orders No. 25-UI-297130 and 25-UI-297129 are set aside, as outlined above.

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

DATE of Service: September 4, 2025

NOTE: This decision reverses the ALJ's orders 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

ເອົາໃຈໃສ່ – 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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