

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0792

Reversed
Claim for Benefits Timely Filed
Eligible Week 37-25

PROCEDURAL HISTORY: On September 30, 2025, the Department served notice of an administrative decision concluding that claimant filed a late claim for benefits for the week of September 7, 2025 through September 13, 2025 (week 37-25) and was ineligible for benefits for that week (decision # L0013237668). Claimant filed a timely request for hearing. On December 2, 2025, ALJ Honea conducted a hearing, and on December 9, 2025, issued Order No. 25-UI-313512, affirming decision # L0013237668. On December 28, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

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

FINDINGS OF FACT: (1) On July 10, 2025, claimant filed an initial claim for unemployment insurance benefits. On July 14, 2025, the Department issued claimant a Wage and Potential Benefit Report (WPBR). The WPBR listed wages and hours claimant received in her base year, per calendar quarter, based on information reported to the Department by claimant's employer. The employer reported claimant's wages and hours to the Department incorrectly. As a result, the WPBR determined that claimant had a monetarily non-valid claim with a weekly benefit amount of zero dollars. *See Exhibit 2 at 4.*

(2) The WPBR stated, "Please look at the base year table carefully to make sure your wages and hours are correct. Check to make sure the wages are for you and not someone else. Check to make sure there are not missing wages. . . Remember to file a **Weekly Claim** each week while we wait for more information. If you do not file weekly claims, we cannot pay your benefits for those weeks, even if we approve your claim." Exhibit 2 at 5 (emphasis in original).

(3) Claimant had never filed an unemployment insurance claim before. When she received the July 14, 2025 WPBR, claimant saw that the Department had determined she was not eligible for benefits. Although the WPBR urged claimant to check to make sure her wages and hours were correct, claimant

“took [the WPBR] as . . . solid word” and “didn’t think there was any mistake or any error” in the WPBR’s determination of her claim. Audio Record at 27:17. Claimant therefore did not promptly contact the Department to raise the concern that her wages and hours were incorrectly reported or request that the Department redetermine her claim.

(4) Under the Department’s rules, to claim a week of benefits timely, claimant needed to file her claim no later than seven days after the end of the week. However, the Department allowed a week of benefits to be claimed more than seven days after the end of the week in situations where a claimant is prevented from claiming a week because of “a barrier based on the Frances [Online] system itself” when “the Frances [Online] system didn’t allow the claimant to claim due to no fault of their own.” Audio Record at 18:27.

(5) For the weeks of July 6 through September 6, 2025 (weeks 28-25 through 36-25), claimant believed she was ineligible for benefits based on the July 14, 2025 WPBR, and “didn’t bother” to file claims for benefits each week. Audio Record at 23:15. If claimant had attempted to file timely claims for benefits for these weeks via Frances Online, the system would not have allowed claimant to claim them. However, claimant could have contacted the Department and claimed each week with the assistance of a Department representative, or at least have the representative notate that claimant wished to claim the weeks.

(6) On or about September 16, 2025, claimant reviewed her W-2 tax forms and noticed that there was a discrepancy in what her employer reported to the Department compared to the amount of wages she had actually earned. On September 16, 2025, claimant contacted the Department and raised the wage discrepancy issue. A representative told claimant that the Department would investigate. Claimant asked if she could file weekly claims for the previous weeks. The representative told claimant that she would not be able to claim any weeks of benefits, including the week of September 7 through September 13, 2025 (week 37-25), until the investigation was complete and the wages were corrected.

(7) The Department obtained corrected wage and hour information and redetermined claimant’s initial claim. On September 26, 2025, the Department issued claimant a new WPBR that determined that claimant had a monetarily valid claim for benefits with a weekly benefit amount of \$872 and a first effective week of July 6 through 12, 2025 (week 28-25). *See* Exhibit 2 at 12-21. On September 26, 2025, claimant contacted the Department and, with the help of a representative, filed late claims for benefits for the weeks of July 6 through September 13, 2025 (weeks 28-25 through 37-25).

(8) The week of September 7 through September 13, 2025 (week 37-25) is the week at issue. The Department did not pay claimant benefits for the week at issue.

(9) The Department adjudicator who adjudicated claimant’s claims for weeks 28-25 through 37-25 reasoned that it was not warranted to allow benefits for the week 37-25 under the exception for situations where “the Frances [Online] system didn’t allow the claimant to claim due to no fault of their own.” Audio Record at 18:27. The adjudicator reasoned that although claimant had a barrier to claiming week 37-25 via the Frances Online system, and had contacted the Department on September 16, 2025, which was within seven days of the end of week 37-25, claimant nevertheless should not be allowed benefits for that week under the exception.

CONCLUSIONS AND REASONS: Claimant filed a timely claim for benefits for the week of September 7 through September 13, 2025 (week 37-25).

Claimant has the burden to prove that the Department should have paid benefits. *See Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976) (Where the Department has paid benefits it has the burden to prove benefits should not have been paid. By logical extension of that principle, where benefits have not been paid claimant has the burden to prove that the Department should have paid 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 in accordance with 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[.]

* * *

(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(3), a continued claim may be filed in person at any Department office in the state of Oregon, by United States mail, by fax, by internet, and by telephone.

Under OAR 471-030-0045(4), the continued claim for benefits for week 37-25 was due by September 20, 2025, seven days after the end of that week. Claimant filed her claim for the week on September 26, 2025, which was more than seven days after the end of week 37-25.

However, OAR 471-030-0045(5) authorizes the Department to use a different reporting schedule appropriate to existing facilities and conditions. Apparently invoking this provision, the Department's witness at hearing testified that the Department allowed weeks to be claimed more than seven days after the end of the week in situations where a claimant is prevented from claiming because of "a barrier based on the Frances [Online] system itself" when "the Frances [Online] system didn't allow the claimant to claim due to no fault of their own." Audio Record at 18:27. The witness further testified that the adjudicator who adjudicated claimant's late claims reasoned that it was not warranted to allow benefits under this exception, even for week 37-25, because although claimant had a barrier to claiming the weeks at issue via the Frances Online system, claimant did not contact the Department to request a redetermination until September 16, 2025. Audio Record at 14:27, 18:56 to 19:16.

As to week 37-25, the Department's interpretation of OAR 471-030-0045(5) to decline to give claimant the benefit of the Frances Online barrier exception was unreasonable and is not entitled to deference.¹ The record shows that claimant raised the redetermination issue with the Department on September 16, 2025, within seven days of the end of week 37-25, and asked the representative if she could claim that week, along with the other prior weeks. The representative told claimant that she would not be able to claim any weeks of benefits, including week 37-25, until the investigation was complete and the wages were corrected. Thus, claimant plainly intended to claim week 37-25, and to do so within seven days of the end of the week, but was not allowed to do so due to no fault of her own. Therefore, as to week 37-25, claimant faced a barrier to claiming based on the Frances Online system itself that was not her fault and accordingly meets the criteria of the Frances Online barrier exception outlined by the Department witness at hearing.

For these reasons, the weekly claim for benefits for September 7 through September 13 (week 37-25), though filed on September 26, 2025, was timely. This is because, pursuant to OAR 471-030-0045(5), it was filed under a different reporting schedule appropriate to existing facilities and conditions via the Frances Online barrier exception outlined by the Department witness at hearing. Claimant is therefore eligible to receive benefits for week 37-25, so long as she is otherwise eligible to receive benefits for that week.

DECISION: Order No. 25-UI-313512 is set aside, as outlined above.

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

DATE of Service: February 3, 2026

¹ EAB will follow the Department's interpretation of an administrative rule about unemployment insurance unless their interpretation is inconsistent with the rule's text, context, or any other source of law. *See accord Ring v. Employment Dep't.*, 205 Or App 532, 134 P3d 1096 (2006), *citing Don't Waste Oregon Com. v. Energy Facility Siting*, 320 Or 132, 142, 881 P2d 119 (1994); *Johnson v. Employment Dept.*, 189 Or App 243, 74 P3d 1159 (*Johnson II*), *adh'd to as modified on recons.*, 191 Or App 222, 81 P3d 730 (2003) (*Johnson III*).

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

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 الإستئناف 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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