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CAT 623

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

247  
MC 000.00

**EMPLOYMENT APPEALS BOARD DECISION**

**2014-EAB-0043**

*Reversed*  
*Request to Cancel Claim Allowed*

**PROCEDURAL HISTORY:** On October 17, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision denying claimant's request to cancel his claim for benefits. Claimant filed a timely request for hearing. On December 12, 2013, ALJ Micheletti conducted a hearing, and on December 18, 2013 issued Hearing Decision 13-UI-06790, affirming the Department's decision. On January 6, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) On September 16, 2013, claimant filed an initial claim for benefits. He claimed benefits for the weeks from September 29 through October 12, 2013 (weeks 40-13 and 41-13).

(2) On October 11, 2013, the Department issued a wage and potential benefits report concluding that claimant qualified for benefits. On October 14, the Department issued a benefit check for claimant for week 40-13, and prepared the check for mailing in an envelope post marked October 14, 2013.

(3) However, October 14 was a federal holiday. The Department therefore did not mail the benefit the check to claimant until October 15. The Department also mailed the wage and potential benefit report to claimant on October 15. Claimant received the benefit check, and wage and potential benefit report, in the mail on October 16.

(4) Claimant did not negotiate the benefit check. He instead asked the Department to cancel his initial claim for benefits.

(5) The Department subsequently created a Reliacard bank account for claimant, and credited the account with a benefit payment for week 41-13. Claimant received the Reliacard in the mail on or after October 19, 2013. Claimant did not activate the Reliacard.

**CONCLUSIONS AND REASONS:** The Department and ALJ erred in denying claimant's request to cancel his claim for benefits.

ORS 657.266(4) provides, in relevant part, that an initial or amended determination regarding a claimant's qualification for benefits may be canceled by the claimant at any time even though final, providing no benefits were paid on the claim. OAR 471-030-0095(1) (May 1, 2005) states that an initial or amended determination may be canceled at any time provided the requirements of ORS 657.266(4) are met. OAR 471-030-0095(3) states that cancellation will be denied if benefits have been paid, and that benefits have been paid if the claimant negotiates a benefit check, or if the claimant's account in a bank or similar financial institution has been credited with one or more benefit payments.

The issue in this case is whether claimant asked the Department to cancel his claim before or after the Department credited his Reliacard bank account. It is undisputed that claimant asked the Department to cancel his claim for benefits on October 16, 2013. In Hearing Decision 13-UI-06790, the ALJ found that Department credited claimant's Reliacard account that same day.<sup>1</sup> We disagree with that finding.

Claimant received his Reliacard in the mail on or after October 19, 2013. Given that claimant received the benefit check, and wage and potential benefit report, one day after they were mailed, the Department likely mailed the Reliacard to claimant on or after October 18, 2013. The Department mailed claimant's benefit check the day after it was issued, and likely would have mailed it the same day it was issued, if it had not been a federal holiday. We therefore find it likely that the Department credited claimant's Reliacard account on or after October 17, 2013.

We therefore find that claimant asked the Department to cancel his claim before the Department credited his Reliacard bank account. Claimant's request therefore should have been allowed.

**DECISION:** Hearing Decision 13-UI-06790 is set aside, as outlined above.

Tony Corcoran and D. E. Larson;  
Susan Rossiter, not participating.

**DATE of Service:** January 16, 2014

**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 website at <http://courts.oregon.gov/OJD/OSCA/acs/records/AppellateCourtForms.page>.

Note: the above link may be broken due to unannounced changes to the Court of Appeals website, in which case you may contact the Appellate Records at (503) 986-5555.

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<sup>1</sup> Hearing Decision 13-UI-06790 at 1.