

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1341

Affirmed
Ineligible

PROCEDURAL HISTORY: On August 14, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not timely file a continued claim for benefits for the week June 28 through July 4, 2015 (week 26-15) (decision # 71158). Claimant filed a timely request for hearing. On October 28, 2015, ALJ Seideman conducted a hearing, and on November 5, 2015, issued Hearing Decision 15-UI-47248, affirming the Department's decision. On November 9, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On June 23, 2015, claimant filed an initial claim for unemployment insurance benefits. Claimant claimed benefits for the week June 14 through 20 (week 24-15), his waiting week for which he was not paid benefits, and the week June 21 through 27 (week 25-15), for which the Department paid him benefits.

(2) During the week June 28 through July 4 (week 26-15) a new employer hired claimant to work. Claimant notified the Department that he would not claim benefits for that week due to his new job. However, claimant later learned that he needed to obtain a commercial driver's license (CDL) to begin the new job and so did not work during week 26-15.

(3) Claimant attempted to claim benefits for week 26-15 online, but was unsuccessful in doing so. He also attempted to claim benefits for that week by telephone, but again was unsuccessful due to the call volume at the time claimant contacted the Department. On August 13, 2015, claimant was successful in reaching the Department by telephone and certifying his benefit claim for week 26-15.

CONCLUSIONS AND REASONS: We agree with the ALJ but for a different reason. Claimant is ineligible for benefits for week 26-15 because he did not timely file his continued claim in accordance with the Department's rules.

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 the Department's regulations. ORS 657.260(1). OAR 471-030-0045(2)(February 23, 2014) requires a claimant "in order to obtain benefits" for any given week to file a "continued claim" for that week. A "continued claim" is one that "certifies...the claimant's status" during the week claimed. OAR 471-030-0045(1). For a continued claim to be timely, an individual must file it no later than seven days following the end of the week for which benefits are claimed. OAR 471-030-0045(4). The individual may file the claim in person at any Employment Department office in Oregon, by mail, by fax, by internet, or by telephone. OAR 471-030-0045(3). The party seeking relief has the burden of persuasion. *See Porter v. Riverdale School Dist. No. 51 JT*, 21 Or App 773, 536 P.2d 1265 (1975).

In Hearing Decision 15-UI-47248, the ALJ construed claimant's claim for benefits to be "an initial, additional or reopened claim" and analyzed the claim under OAR 471-030-0040(3) which applies to such claims. Hearing Decision 15-UI-47248 at 2. However, claimant's claim for the week at issue was a "continued claim" for benefits, regulated under OAR 471-030-0045(1), because it was not an initial or reopened claim and followed claimant's correctly filed and paid continued claim for benefits for week 25-15. To be timely, claimant had to file his benefit claim for week 26-15 no later than seven days following the end of that week, or by July 11, 2015. OAR 471-030-0045(4). It was undisputed that claimant filed his benefit claim for that week by telephone on August 13, 2015, approximately 40 days after the end of the week claimed. Audio Record ~ 6:00 to 7:00. Accordingly, that continued claim was not timely filed. Claimant testified at hearing that he did not file his claim during the seven days following the end of that week because he had difficulty doing so online and could not reach a Department representative by phone due to call volume. Audio Record ~ 8:00 to 12:00. He ultimately testified, "All self-inflicted pain I guess because I didn't submit the thing properly." Audio Record ~ 13:30 to 13:40. We agree. Under the current rule, there is no good cause exception to the requirement that an individual file a continued claim within the time allowed. Therefore, under OAR 471-030-0045(4), claimant is not eligible for unemployment insurance benefits for the week at issue (week 26-15).

DECISION: Hearing Decision 15-UI-47248 is affirmed.

Susan Rossiter and J. S. Cromwell

DATE of Service: December 16, 2015

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 Court of Appeals website at courts.oregon.gov. Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.