

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0291

Affirmed
Ineligible

PROCEDURAL HISTORY: On January 21, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not file his claim in accordance with the Department's rules for the week of October 25, 2015 through October 31, 2015 (decision # 102001). Claimant filed a timely request for hearing. On February 19, 2016, ALJ Shoemake conducted a hearing, and on February 23, 2016 issued Hearing Decision 16-UI-53578, affirming the Department's decision. On March 11, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On October 22, 2015, claimant called the Department to obtain information about making an initial claim for unemployment insurance benefits and the process of filing weekly claims. Claimant understood the representative to tell him once he had made an initial claim for benefits he could start claiming weekly benefits as soon as October 26, 2015. On October 23, 2015, claimant filed an initial claim for benefits online. The first effective week of claimant's claim was the week of October 18, 2015 through October 24, 2015 (week 42-15).

(2) On Monday, October 26, 2015, claimant claimed his first week of benefits online. Although it was not yet over, claimant was under the impression he was claiming benefits for the week of October 25, 2015 through October 31, 2015 (week 43-15), the week at issue. Claimant did not notice the legend on the online page he was using that stated he was claiming benefits for week 42-15. When claimant was asked to list his work seeking activities during the week for which he was claiming benefits, claimant listed them as having occurred during the week ending October 24, 2015, since that was the latest date the system would allow him to enter. Because of the date he accessed the online system and the ending date he selected for the week in which he performed work seeking activities, the Department's records reported that he had claimed benefits for the week of October 18, 2015 through October 24, 2015.

(3) On Wednesday, October 28, 2015, claimant called the Department's claim line, intending to confirm that he had correctly filed his weekly claim on October 26, 2015. Claimant asked the representative

generally if “everything is okay” with the weekly claim had had filed on October 26, 2015 and the representative stated to him “everything’s fine.” Audio at ~13:17, ~15:10, ~21:58, ~22:20.

(4) Sometime after October 28, 2015, claimant tried to make his second weekly claim for benefits online. The Department’s claim system would not allow him to do so and gave him a “general error” message. Audio at ~11:58. On November 13, 2015, claimant was in local a WorkSource office and received information that he understood to mean his unemployment claim had been “closed.” Audio at ~12:12. Thereafter, claimant called the Department’s claim line several times to try to learn what had happened to his claim. From these calls, claimant came to understand that the Department’s records did not show that he had made any claim for benefits during week 43-15 and the time in which he could timely file a claim for that week had passed on November 7, 2015. Later, claimant was told by another Department representative that he could file an “appeal” of the claim deadline. Audio at ~27:59.

(5) On December 4, 2015, claimant claimed benefits for week 43-15, 34 days after the end of the week for which he was claiming benefits

CONCLUSIONS AND REASONS: Claimant did not file his claim for benefits for the week of October 25, 2015 through October 31, 2015 in accordance with the Department’s rules. Claimant is ineligible to receive benefits for that week.

ORS 657.260(1) states all claims for benefits must be filed in accordance with such regulations as the Director of the Employment Department may prescribe. OAR 471-030-0045(4) (February 23, 2014) provides, in relevant part, that a continued claim for benefits must be filed no later than seven days following the end of the week for which benefits are claimed. By first claiming benefits for week 43-15 on December 4, 2015, claimant made his claim 34 days after the end of the week for which he claimed benefits. Claimant did not file his claim within the time period prescribed in the Department’s regulations.

Claimant contended that his untimely claim of benefits for the week of October 25, 2015 through October 31, 2015 was caused by a “miscommunication” of information to him by the Department. Audio at ~28:36. Claimant argued, in essence, that the Department should be estopped from requiring his compliance with the time limits set out in OAR 471-030-0045(4) because of these alleged miscommunications. To invoke the doctrine of estoppel against a governmental entity requires finding that an agency or its representative made a false or misleading statement of a material fact and an individual justifiably and detrimentally relied upon that false or misleading statement. *Employment Division v. Western Graphics Corporation*, 76 Or App 608, 710 P2d 788 (1985). Here, claimant asserted that when he spoke with a Department representative on October 22, 2015 and she told him he could begin filing his weekly claims on October 26, 2015, he understood that to mean he was allowed to file his claim for week 43-15 on Monday, October 26, 2015. Audio at ~ 13:17. While claimant might have interpreted the representative’s statement to mean specifically that he could claim benefits for the week beginning on October 25, 2015 on October 26, 2015, that interpretation was not reasonable. The representative did not say to him it was permissible for him to claim benefits for week 43-15 on October 26, 2015, and what the representative told claimant representative was, in fact, correct information in the context of the overall process for filing weekly claims. Absent a more specific inquiry from claimant, the representative could not have known and reasonably should not have known that claimant was asking about the date on which he could file his claim for benefits for week 43-15 or that she was

providing incorrect information to him. As well, claimant asserted that on October 28, 2015, when the representative told him that “everything’s fine” with the weekly claim he made on October 26, 2015, he construed that comment to mean that he was allowed to make his claim on that day for week 43-15. Audio at ~10:31, ~11:23, ~13:17, ~15:10, ~21:56. Although claimant might have construed the representative’s statement to mean what he asserted, that also was not what the representative said to him, and the representative was providing correct information to him when she indicated he had taken the correct general steps to make a claim on October 26, 2015, without specifying the week(s) for which that claim was valid. Absent a more pointed inquiry from claimant, the representative did not and reasonably should not have known he was asking about whether it was permissible to file his claim for week 43-15 on October 26, 2014 or that she was providing incorrect information to him about that specific matter. Because there is no evidence from which it can reasonably be inferred that either representative made a false or misleading statement to claimant, the threshold for invoking the doctrine of estoppel against the Department is not present on this record. Accordingly, claimant was required to follow OAR 471-030-0045(4) when he claimed benefits for week of 43-15.

Claimant did not make his claim for benefits for week 43-15 within seven days of the end of that benefit week, or by November 7, 2015. Claimant did not make his claim for that week in accordance with the Department’s regulations. Claimant is ineligible to receive benefits during the week of October 25, 2015 through October 31, 2015.

DECISION: Hearing Decision 16-UI-53578 is affirmed.

Susan Rossiter and D. P. Hettle;
J. S. Cromwell, not participating.

DATE of Service: April 13, 2016

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.

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