

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0328

Affirmed
Ineligible

PROCEDURAL HISTORY: On February 3, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not eligible for benefits for the period of December 27, 2015 through January 2, 2016 because he did not file a claim in accordance with Department rules (decision # 142537). Claimant filed a timely request for hearing. On March 8, 2016, ALJ Vincent conducted a hearing, and on March 11, 2016 issued Hearing Decision 16-UI-54902, affirming the Department's decision. On March 22, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument and the entire hearing record when reaching this decision.

FINDINGS OF FACT: (1) On December 22, 2015, claimant filed an initial claim for unemployment insurance benefits online. Claimant did not claim benefits for the first week of his claim, December 20 through 26, 2015 (week 51-15).

(2) On January 5, 2016, claimant called the Department and spoke with a representative who advised claimant that he needed to reopen his claim, and told claimant she had "taken care of it," after discussing with him why he had been unable to claim a week of benefits online. Audio Record at 10:20 to 10:24. Claimant assumed from his conversation with the representative that he had to do nothing further to claim benefits for the week of December 27, 2015 through January 2, 2016 (week 52-15), the week at issue.

(3) On January 15, 2016, claimant claimed and benefits for week 52-15. The Department did not pay claimant benefits or give him waiting week credit for that week.

CONCLUSIONS AND REASONS: We agree with the ALJ and conclude claimant is not eligible for benefits or waiting week credit for week 52-15.

An "initial claim" is a new claim by a claimant to establish a benefit year or other eligibility period. OAR 471-030-0040(1)(b) (February 23, 2014). In order to claim benefits for a week of unemployment,

a claimant must file a claim for the week. OAR 471-030-0045(2) (February 23, 2014). The claim must be filed no later than seven days following the end of the week for which benefits, waiting week credit, or noncompensable credit is claimed. OAR 471-030-0045(4). Claimant has the burden to prove he was eligible for benefits with respect to weeks the Department withheld benefits or waiting week credit. *See Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976). The Department did not pay claimant benefits or give him waiting week credit for week 52-15. Therefore, claimant has the burden to prove that he claimed benefits in accordance with Department rules.

Claimant did not timely claim benefits for week 52-15 because he assumed he had reopened his claim and claimed benefits for the week at issue during his conversation with the representative on January 5, 2016. Claimant argued at hearing and in his written argument that he should not be denied benefits due to a mere mistake on his part where he did not intentionally disregard the Department's rules. Audio Record at 11:10 to 11:57. The record shows no reason to doubt claimant intended to follow the rules. However, regardless of claimant's intent, he failed to claim benefits for week 52-15 within the time limit imposed by OAR 471-030-0045(4), and is thus ineligible for benefits for that week as a matter of law.

Claimant also appears to contend that, based on his understanding of the Department representative's statement that she had "taken care of it," the Department should be estopped from denying him benefits for week 52-15. Estoppel against a governmental entity requires a finding that an agency or its representative made a false or misleading statement of an existing material fact, and an individual justifiably relied upon that false or misleading statement to his detriment. *Employment Division v. Western Graphics Corp.*, 76 Or App 608, 710 P2d 788 (1985).

The Department's witness testified at hearing that the Department advised claimant on January 5 to claim week 52-15 the next day, and that such advice was typical because it generally took the Department a day to process a reopen request. Audio Record at 16:08 to 17:09. Thus, although the record shows claimant's understanding of what the representative told him on January 5, the preponderance of the evidence does not show that the representative made false or misleading statements of material facts that mislead claimant. Absent such a showing, claimant failed to meet his burden of proof to establish that the Department should be estopped from denying him benefits or waiting week credit for week 52-15.

For the reasons explained, claimant is not entitled to benefits or waiting week credit for week 52-15.

DECISION: Hearing Decision 16-UI-54902 is affirmed.

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

DATE of Service: April 20, 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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