

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0414

Modified
Benefits Allowed in Part, Denied in Part

PROCEDURAL HISTORY: On February 8, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 114633) concluding that claimant failed to timely claim unemployment benefits for weeks 45-15 (November 8 through 14, 2015), 46-15 (November 15 through 21, 2015) and 48-15 (November 29 through December 5, 2015). Claimant filed a timely request for hearing. On March 1, 2016, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for March 15, 2016. On March 15, 2016, ALJ Wyatt continued the hearing because no Department representative appeared for the hearing. On March 16, 2016, OAH issued notice of a continued hearing scheduled for March 30, 2016. On March 30, 2016, ALJ Wyatt conducted a hearing at which the Department again failed to appear, and on April 1, 2016, issued Hearing Decision 16-UI-56288, affirming the administrative decision. On April 12, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

The Department submitted a written argument in which it stated that it made a “clerical error” in decision # 114633. According to the Department, “[t]he denial of benefits should have been” for the period from November 8, 2015 through November 28, 2015 (weeks 45-15 through 47-15). We construe the Department’s argument as a request to have EAB consider new information under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider new information only if the party offering the information shows it was prevented by circumstances beyond its reasonable control from presenting the information at the hearing. In support of its request, the Department states that “[t]he Department did not offer this information into evidence at the hearing, as the Department did not attend the hearing and was unaware of any clerical errors until receipt of Hearing Decision 16-UI-56288.” Because the Department offered no explanation for its failure to attend either of the two hearings scheduled in this matter, it failed to demonstrate that any circumstances beyond its reasonable control prevented it from offering the information at a hearing that it now wants EAB to consider. The Department’s request to have EAB consider new information is therefore denied.¹

¹ We note that acceptance of the Department’s evidence regarding its “clerical error” and any review by EAB of the Department’s denial of claimant’s late claim for benefits for week 47-15, would result in a denial of claimant’s opportunity to request a hearing on this issue, contrary to her statutory right under ORS 657.267(1).

FINDINGS OF FACT: (1) On December 10, 2015, claimant claimed benefits for week 48-15 (November 29, through December 5, 2015).²

(2) On December 21, 2015, claimant claimed benefits for weeks 45-15 (November 8 through 14, 2015) and 46-15 (November 15 through 21, 2015). Neither of these weeks claimed by claimant was the first effective week of her claim.

CONCLUSION AND REASONS: Claimant did not file timely continued claims for benefits for weeks 45-15 and 46-15. Claimant filed a timely continued claim for benefit for week 48-15.

OAR 471-030-0045(4) (February 23, 2015) a continued claim for benefits must be filed “no later than seven days following the end of the week for which benefits, waiting week credit, or non-compensable credit, or any combination of the foregoing is claimed.” (OAR 471-030-0045(4)(a) provides an exception to this rule, which is not applicable here). In accordance with this rule, claimant’s claims for benefits for weeks 45-15 and 46-15 were not timely filed. Her claim for benefits for week 48-15 was timely filed, however.

DECISION: Hearing Decision 16-UI-56288 is modified, as outlined above.

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

DATE of Service: May 6, 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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² We take official notice of this fact which is contained in Department records. OAR 471-041-0090(3) (October 29, 2006). A copy of screen shots taken from Department computer records have been marked as EAB Exhibit 1. Page one of EAB Exhibit 1 shows that claimant filed her claim for week 48-15 on December 10, 2015, and also shows that claim was not denied as untimely filed. Page two of EAB Exhibit 1 shows that claimant filed her claim for week 46-15 on December 21, 2015, and also shows that claim was denied as untimely filed. Any party that objects to the admission of EAB Exhibit 1 must submit its objections to this office in writing, setting forth the basis of this objection, within 10 days of the date on which this decision is mailed. Unless such an objection is received, EAB Exhibit 1 will remain part of the record.