

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0563

Affirmed
Backdating Request Denied

PROCEDURAL HISTORY: On March 25, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant did not claim benefits for the week of February 21, through 27, 2016 in accordance with the Department's rules (decision # 132932). Claimant filed a timely request for hearing. On April 18, 2016, ALJ R. Frank conducted a hearing, and on April 26, 2016 issued Hearing Decision 16-UI-58132, concluding that claimant was not unemployed from February 21, through 27, 2016. On May 11, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: 1. On March 2, 2016, claimant's most recent employer filed an initial claim for unemployment insurance benefits on claimant's behalf.

2. On March 3, 2016, claimant claimed benefits for the week of February 21, through 27, 2016 (week 8-16), the week at issue.

CONCLUSIONS AND REASONS: We agree with the Department that the initial claim for benefits cannot be backdated to week 8-16.

In Hearing Decision 16-UI-58132, the ALJ found that claimant earned \$562.35 working for his most recent employer during week 8-16, which exceeded his weekly benefit amount of \$440.¹ Based on those findings, the ALJ concluded that claimant was not unemployed during the week at issue, and therefore is not eligible for benefits for that week.² We do not disagree with the ALJ's findings or analysis. However, the issue before the ALJ was whether claimant's initial claim for benefits can be backdated to week 8-16. Under OAR 471-030-0040(3) (February 23, 2014), an initial claim must be filed prior to or during the first week or series of weeks for which benefits, waiting week credit, or non-compensable credit is claimed. An initial claim is effective the Sunday of the calendar week in which it is filed. *Id.* Here, the initial claim for benefits was effective, Sunday, February 28, 2016, and therefore the week of

¹ Hearing Decision 16-UI-58132 at 1.

² *Id.* at 1-2.

February 28 through March 5, 2016 (week 9-16). Under OAR 471-030-0040(3), the initial claim for benefits cannot be backdated to week 8-16, regardless of whether claimant was unemployed during that week. We therefore agree with the Department that claimant is not entitled to benefits or waiting week credit for week 8-16.

DECISION: Hearing Decision 16-UI-58132 is affirmed.

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

DATE of Service: May 18, 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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