

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0741

Affirmed
Request to Backdate Denied

PROCEDURAL HISTORY: On April 27, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision denying claimant's request to backdate her unemployment claim (decision # 114414). Claimant filed a timely request for hearing. On May 31, 2016, ALJ Menegat conducted a hearing, and on June 2, 2016, issued Hearing Decision 16-UI-60940, affirming the administrative decision. On June 21, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On January 24, 2016, claimant filed an initial claim for unemployment benefits. At or around the time claimant filed her claim, claimant spoke with representative who told her that the Department was investigating her work separation, and that she would need to wait for a letter from the Department about the status of her claim. Claimant provided the representative with her correct and current address, but the representative did not enter this new address into the Department records.

(2) After claimant filed her initial claim, the Department sent claimant information about the requirements for filing continued claims. Claimant did not receive this information, however, because it was not sent to her current address.

(2) Claimant did not make timely weekly claims for benefits during the weeks of January 31 through March 12, 2016 (weeks 5-16 through 10-16). On March 22, 2016, claimant called the Department to ask about the status of her unemployment benefits. A Department representative corrected claimant's address in the Department's records, and reopened claimant's claim effective that day. Claimant requested that her claim be backdated to include weeks 5-16 through 11-16. The representative backdated her claim only to include week 11-16, however.

CONCLUSIONS AND REASONS: Claimant's request to backdate her reopened claim to include benefits for weeks 5-16 through 10-16 is denied.

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 471-030-0040(3)(February 23, 2014) provides that "[a]n initial, additional or reopened claim must be filed prior to or during the first week for which benefits, waiting week or non-compensable credit is claimed and prior to or during the first week of any subsequent series thereafter." Claimant filed her initial claim for benefits on January 24, 2016, but did not make timely weekly claims for benefits during subsequent weeks. As a result, she was required to reopen her claim, which she did on March 22, 2016. OAR 471-030-0040 provides that the Department may only backdate an additional or reopened claim "to the calendar week immediately preceding the week in which the request to backdate is made." Here, it appears that the Department is at fault because it did not record claimant's correct and current address and therefore failed to advise her about the requirements for filing continued claims. There is, however, no exception to the strict terms of the backdating rule, even when the Department erred. Claimant is entitled to have her claim backdated to include week 11-16, the week immediately preceding the week in which she made her request to backdate. She is not entitled to have her claim backdated to include weeks 5-16 through 10-16.

DECISION: Hearing Decision 16-UI-60940 is affirmed.

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

DATE of Service: July 27, 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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