

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0962

Affirmed
Request to Backdate Denied

PROCEDURAL HISTORY: On July 25, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision denying claimant's request to backdate his claim for unemployment benefits (decision # 105937). Claimant filed a timely request for hearing. On August 15, 2016, ALJ Menegat conducted a hearing, and on August 16, 2016 issued Hearing Decision 16-UI-65715, affirming the administrative decision. On August 20, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Claimant was laid off due to lack of work from an employer on June 2, 2016. On or about that date, he contacted the Department about filing a claim for unemployment benefits. A Department representative told claimant that if he filed his claim on June 2, his weekly benefit amount would be \$279, but if he waited to file his claim until July 3, 2016, the date on which a third quarter of 2016 began, his weekly benefit amount would be \$590. At the time claimant spoke to the Department representative, neither the representative nor claimant was aware that one of his base year employers had not reported all the wages claimant had earned.

(2) Based on the Department representative's advice, claimant did not file his initial claim for unemployment insurance benefits until July 3, 2016. After claimant filed his claim and received a Wage and Potential Benefit Report, he discovered that one of his base year employers had failed to report approximately \$22,000 of his earnings.

(3) Claimant contacted the Department and reported the error his employer had made in reporting his earnings. On July 6, 2016, his weekly benefit amount was re-determined to be \$590. Claimant then requested that his claim be backdated to include weeks 23-16 through 26-16 (June 5 through July 2, 2016).

CONCLUSION AND REASONS: Claimant's request to backdate his claim to include benefits for weeks 23-16 through 26-16 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." An initial claim "is effective the Sunday of the calendar week in which it is filed"; the rules do not permit an initial claim to be backdated. *Id.* Claimant's initial claim was effective on July 3, 2016, the Sunday of the calendar week in which it was filed, and the rules do not allow for his claim to be backdated to include any preceding weeks.

Claimant asserted, however, that he should be allowed to backdate his claim because he was given incorrect information by a Department representative when he contacted the Department on June 2. On that date, a Department representative advised claimant that his weekly benefit amount would be \$279 if he filed for benefits on June 2, but would increase to \$590 per week if claimant waited until July 3 to file his initial claim. According to claimant, the Department erred in failing to realize that one of his base year employers had incorrectly reported claimant's earnings to the Department. Claimant notes that had the correct amount of earnings been used to calculate claimant's unemployment benefits on June 2, he would have been eligible for a weekly benefit amount of \$554 for weeks 23-16 through 26-16. Audio recording at 35:35.

Claimant essentially argues that the doctrine of equitable estoppel should be applied to prohibit the Department from refusing to allow him to back date his claim for unemployment benefits. The doctrine of equitable estoppel "requires proof of a false representation, (1) of which the other party was ignorant, (2) made with the knowledge of the facts, (3) made with the intention that it would induce action by the other party, and (4) that induced the other party to act upon it." *Keppinger v. Hanson Crushing, Inc.*, 161 Or App 424, 428, 983 P2d 1084 (1999) (citation omitted). In addition, to establish estoppel against a state agency, a party "must have relied on the agency's representations and the party's reliance must have been reasonable." *State ex rel SOSOC v. Dennis*, 173 Or App 604, 611, 25 P3d 341, *rev den*, 332 Or 448 (2001) (citing *Dept. of Transportation v. Hewett Professional Group*, 321 Or 118, 126, 895 P2d 755 (1995)). The concept of estoppel "focuses on the knowledge of the governmental party" and "contemplates that the party who is estopped knows the truth of the matter and misleads the other party." *City of Salem v. Furlott*, 149 Or App 336, 341, 942 P2d 872, *rev den* 326 Or 68 (1997) (citation and internal quotations omitted).¹ Here, neither the Department representative nor claimant knew that an employer had incorrectly reported his wages until claimant received his Wage and Potential Benefit Report after he filed his initial claim on July 3. Because the Department representative did not know "the truth of the matter," *i.e.*, the correct amount of wages upon which the calculation of his weekly benefit amount should be based, the Department cannot be estopped from refusing to allow claimant to backdate his claim.

¹ In *City of Salem v. Furlott*, the city had initially approved a building permit to allow the defendants to remodel their building, but subsequently conducted a survey and discovered, for the first time, that the defendants' building was located partly in a dedicated right-of-way. The city then began proceedings to compel the defendants to remove the portion of the building that encroached on city property. The court rejected the defendants' argument that the city was estopped from requiring the removal of the building from the right-of-way on the grounds that there was no evidence that the city was aware of the correct boundary at the time it approved the building permit; the city only learned about the encroachment when the survey was conducted. *City of Salem v. Furlott*, 149 Or App at 341.

Claimant is not entitled to have his initial claim for unemployment benefits backdated to include weeks 23-16 through 26-16.

DECISION: Hearing Decision 16-UI-65715 is affirmed.

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

DATE of Service: September 15, 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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