

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1207

Affirmed
Ineligible Week 31-16

PROCEDURAL HISTORY: On August 23, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant did not claim benefits for the week of July 31 through August 6, 2016 in accordance with the Department's rules (decision # 73801). Claimant filed a timely request for hearing. On September 30, 2016, ALJ Vincent conducted a hearing, and on October 7, 2016 issued Hearing Decision 16-UI-68792, affirming the Department's decision. On October 27, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On August 8, 2016, claimant filed an initial online claim for benefits. Claimant's claim was not an additional or reopened claim.

(2) On August 10, 2016, claimant claimed unemployment insurance benefits for the week of July 31 through August 6, 2016 (week 31-16). The Department denied the claim.

CONCLUSIONS AND REASONS: Claimant is not eligible for unemployment insurance benefits or waiting week credit for week 31-16.

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 rules. ORS 657.260(1). 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). Under OAR 471-030-0040(3), 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.* Thus, because claimant did not file her initial claim prior to or during the first week for which she claimed benefits or waiting week credit, claimant was not eligible for benefits for that week under OAR 471-030-0040 as a matter of law.

It is undisputed that claimant did not file her initial claim for unemployment insurance benefits until August 8, 2016, making her claim for benefits effective the week beginning Sunday, August 7, 2016 (week 32-16). The Department denied claimant's claim for benefits for the week of July 31 through August 6, 2016 (week 31-16) because her claim for benefits was not effective until week 32-16. Audio Record at 3:16 to 3:54. Claimant testified at hearing that she believed the Department should grant her weekly claim for benefits for week 31-16 because she had not filed for unemployment benefits before and misunderstood the rules. Audio Record at 4:27 to 5:04.

The record contains no evidence that claimant attempted to file an initial claim for benefits prior to week 32-16. Although in some circumstances the Department may backdate an *additional or reopened* claim, the Department may not backdate an initial claim for benefits. *See* OAR 471-030-0040(3). There is no exception to the strict terms of the backdating rules, even when claimant erred in good faith. Therefore, claimant is not entitled to benefits or waiting week credit for week 31-16 as a matter of law.

DECISION: Hearing Decision 16-UI-68792 is affirmed.

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

DATE of Service: November 7, 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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