

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-1443**

*Reversed*  
*Eligible*

**PROCEDURAL HISTORY:** On October 7, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not file a claim for benefits in accordance with the Department's rules (decision # 175231). Claimant filed a timely request for hearing. On December 15, 2016, ALJ Holmes-Swanson conducted a hearing at which a Department representative did not appear, and on December 19, 2016 issued Hearing Decision 16-UI-73157, affirming the Department's decision. On December 29, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Sometime around September 1, 2016, claimant filed or reopened a claim for unemployment insurance benefits. That claim was valid.

(2) When claimant filed or reopened his claim, the Department issued him a *Claimant's Handbook* that it distributed to all claimants informing them of the Department's requirements for claiming unemployment benefits. In a section titled "Filing Weekly Claims," there was a subsection titled "When do I file a weekly claim?" Under that subsection, the *Handbook* stated:

You claim a week after it ends. The Employment Department uses a calendar week of Sunday through Saturday. After a week ends at 11:59 PM on Saturday, you may claim that week. The *Weekly Claim Line* is available 24 hours a day, seven days a week.

Exhibit 1 at 1.

The following subsection of the *Handbook* was titled "How do I claim each week?" and stated, "To claim each week, \*\*\*\* [you may] claim by phone with the *Weekly Claim Line*." Exhibit 1 at 1.

(3) On Saturday, September 17, 2016, at 10:22 p.m. claimant filed a claim for benefits on the Department's telephone claim line for the week of September 4 through September 10, 2016 (week 36-

16). Exhibit 1 at 3. The call claimant made to the claim line lasted 15 minutes and 46 seconds. *Id.* Claimant's call was processed and he received waiting week credit for week 36-16.

(4) On Saturday, September 24, 2016 at 11:42 p.m., claimant called the Department's weekly claim line to claim benefits week of September 11, 2016 through 17, 2016 (week 37-16). Claimant successfully reached the automated claim line, but after entering the required identifying information, a recorded message stated that "[he] had a break in [his] claim" and "[the Department] was not able to process [his claim] at that time." Audio at ~18:25. Claimant then disconnected the call and called the weekly claim line again at 11:48 p.m. The second call had the same result as the first and the claim line would not allow claimant to make his claim for week 37-16.

(5) On Monday, September 27, 2016, the first business day after September 24, 2016, claimant called the Department about his failed attempt to claim benefits for week 37-16. The representative verified that claimant had tried to timely claim benefits for week 37-16 and told him he should have had until midnight on September 24, 2016 to claim benefits for week 37-16, but "if there was an issue claimant will lose the week that claimant was trying to claim." Exhibit 1 at 3. The representative told claimant that the Department records did not show he had filed a claim for week 37-16 and that his attempt to do so with her by phone was late and could not be backdated to reflect that he tried to timely file that claim on September 24, 2016.

**CONCLUSIONS AND REASONS:** Claimant's claim for week 37-16 should be considered timely filed and he is eligible to receive benefits for that week.

ORS 657.260(1) provides that a claim for benefits must be filed in accordance with the Department's regulations. With limited exceptions, none of which are applicable here, OAR 471-030-0045(4) (February 23, 2014) states that a continued claim must be filed no later than seven days following the end of the week for which benefits are claimed. OAR 471-030-0045(3)(e) states that, if filed by telephone, the date of the filing shall be the date that is shown by the agency system that recorded the call. OAR 471-040-0040(1)(e) (February 23, 2014) allows Department representatives to backdate the filing of initial, additional or reopened claims to a prior week if there was a documented contact with the Department by a claimant in that prior week. There is no authority to backdate the filing date of a continued claim.

In Hearing Decision 16-UI-73157, the ALJ concluded that, although claimant tried to timely file his weekly claim for week 37-16 and he "might have done nothing wrong," claimant was ineligible to receive benefits for week 37-16 because his continued claim was not recorded as having been timely filed. Hearing Decision 16-UI-73157 at 3. The ALJ reasoned there was "no exception to the operation of the strict terms of the backdating rule, regardless of fault," and implicitly concluded that he did not have the authority to find that claimant's efforts to timely file on September 24, 2016 were adequate to effectuate a timely filing. Hearing Decision 16-UI-73157 at 3. We disagree.

It is settled law in Oregon that a governmental entity, like the Department, may be estopped from enforcing its rules to deny benefits to an individual if the individual was otherwise entitled to receive those benefits and the individual's failure to comply with the entity's requirements for receiving those benefits was the result of the individual's reasonable reliance on the entity's ambiguous, incomplete, misleading or incorrect information. *See Pilgrim Turkey Packers, Inc. v. Department of Revenue*, 261

Or 305, 309, 493 P2d 1372 (1972); *Johnson v. State Tax Commission*, 248 Or 460, 463-464 (1967); *Employment Division v Western Graphics Corporation*, 76 Or App 608, 614-615, 710 P3d 788 (1985); *Thrift v. Adult & Family Services Division*, 58 Or App 13, 16-617, 646 P2d 1358 (1982); *Glover v. Adult & Family Services Division*, 46 Or App 829, 835-836 (1980).

Here, claimant relied on the Department's *Claimant Handbook* when he did not call to make his claim for week 37-16 until 11:42 p.m. on September 24, 2016. Since the *Handbook* was created by the Department as a guide to claimants in complying with the Department's requirements, claimant's reliance on the statements in it was reasonable. According to the *Handbook*, the weekly claim line that claimant used was available 24 hours per day, seven days a week, with no mention of any possible interruptions in its claim processing. Claimant's claim would have been timely filed if the Department's claim line had processed his claim before midnight on September 24, 2016 and, since his previous call to the claim line had taken only 15 minutes to complete, he had no reason to foresee that he would not complete that filing before midnight. However, it appears that claimant's claim was not processed when he called on September 24, 2016 at 11:42 p.m. because the Department had by that time already advanced its telephone claim system to reflect that it was then in claim week 38-15, although, according to the *Claimant Handbook*, there should have been at least 18 minutes left at the time claimant called to file his claim for week 37-16. Audio at ~19:03. Since claimant made every reasonable and good faith effort to comply with all claim filing requirements as set out in the *Claimant Handbook*, the *Handbook* did not warn him of any interruptions in the processing of claims on the weekly claim line and claimant would have been eligible for benefits for week 37-16 if his call had been accepted and his claim processed as it should have been on September 24, 2016, claimant was misled by the *Claimant Handbook* and, as a result, did not receive the benefits to which he was otherwise entitled for week 37-16. Based on the case authority cited above, it is appropriate to invoke the doctrine of estoppel against the Department and to preclude the Department from taking the position that claimant did not file timely file his claim for benefits for week 37-16 or that he did not comply with OAR 471-030-0045(4) for that benefit week.

Claimant timely filed his claim for benefit week 37-16. Claimant is eligible to receive benefits for that week.

**DECISION:** Hearing Decision 16-UI-73157 is set aside, as outlined above.

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

**DATE of Service:** February 7, 2017

**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](http://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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