

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0084

Reversed & Remanded

PROCEDURAL HISTORY: On October 7, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 102626) concluding that claimant filed late claims for benefits for weeks 36-16 and 37-16 (September 4 through 17, 2016). Claimant filed a timely request for hearing. On January 13, 2017, ALJ Shoemake conducted a hearing, and on January 20, 2017, issued Hearing Decision 17-UI-75117, affirming the administrative decision. On January 24, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On September 3, 2016, claimant filed an initial claim for unemployment benefits. Audio recording at 30:02.

(2) On September 13, 2016, claimant filed an online claim for unemployment benefits for week 36-16. Audio recording at 19:50. On September 19, 2016, claimant received a letter from the Department that told her that because there had been a break in reporting to the Department, she needed to restart her claim for week 36-16. The letter stated:

To restart your claim effective this week you must respond within seven days from the mailing date of this notice. If you fail to provide the information requested below within 7 days you will be denied benefits for this week and for each week afterward that we do not receive the information.

The letter warned claimant not to attempt to restart her claim using the Department's online system. Exhibit 1. Claimant responded to the letter within seven days of the date on which it was mailed.

(3) On September 24, 2016, claimant filed a telephone claim for unemployment benefits for week 37-16 (September 11 through 17, 2016). Audio recording at 21:07. On October 1, 2016, claimant received a letter from the Department that told her that because there had been a break in reporting to the Department, she needed to restart her claim for week 37-16. The letter contained language identical to that in the September 19 letter regarding the need to respond to the letter within seven days and the consequence of failing to respond, and also warned claimant not to attempt to restart her claim through

the Department's online system. Claimant responded to the letter within seven days of the date on which it was mailed.

(4) Department records show that on September 29, 2017, claimant called the Department to restart her claim for weeks 36-16 and 37-16. Audio recording at 31:51.

CONCLUSIONS AND REASONS: Hearing Decision 17-UI-75117 is reversed, and this matter remanded for further development of the record.

OAR 471-0030-0040(3)(February 23, 2014) provides that "an initial, additional, or reopened claim must be filed prior to or during the first week or series of weeks for which benefits, waiting week credit, or noncompensable credit is claimed..." and also provides that an initial claim is "effective on the Sunday of the calendar week in which it is filed." The Employment Department will, upon request, back date an additional or reopened claim to the calendar week immediately preceding the week in which the backdating request was made, *Id.*

In Hearing Decision 17-UI-75117, the ALJ found that the Department asked claimant to provide information to restart her claims for weeks 36-16 and 37-16, the weeks at issue. The ALJ also found that because the Department did not receive the information claimant submitted until September 29, 2016, her requests to restart her claims for the weeks at issue were not timely. We disagree with the ALJ's findings and conclusion, and remand this matter to the ALJ for further development of the record.

The record shows that on September 19 and October 1, 2016, claimant received letters from the Department informing her that she needed to restart her claims for weeks 36-16 and 37-16 and instructing her to do so by responding to the letters within seven days. Contrary to the ALJ's finding, the record does not show that the Department received claimant's responses to these letters on September 29. Claimant testified that she responded to both letters within seven days of the date on which they were mailed. Findings of Fact 2 and 3. The Department representative testified that claimant contacted the Department by telephone on September 29. Audio recording at 31:51. The ALJ never asked the Department about the issuance of the September 19 and 26 letters, and did not ask if and when the Department received claimant's responses.

On remand, the ALJ must ask the Department representative when it mailed the letters claimant received on September 19 and 26, whether Department records contain any notes concerning these letters, if the Department received claimant's responses, and if it did, when these responses were received. If Department records show that it received claimant's responses within the required seven days, the ALJ should then ask why it denied claimant benefits for weeks 36-16 and 37-17. Finally, we note that the record shows that on September 24, 2016, claimant claimed benefits by telephone for week 37-16. On remand, the ALJ must ask about any records the Department may have of this September 24 contact, and why the Department did not consider this a request to back date a reopened claim which was effective for the week immediately preceding the week in which the backdating request was made. The ALJ should ask any other questions necessary to determine whether claimant's claims for weeks 36-16 and 37-16 were timely filed.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full

and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Absent sufficient information in the hearing record to determine whether claimant timely filed claims for unemployment benefits for weeks 36-16 and 37-16, Hearing Decision 17-UI-75117 is reversed, and this matter remanded for further development of the record on that issue. .

DECISION: Hearing Decision 17-UI-75117 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: February 9, 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. 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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