

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0233

Affirmed
Ineligible

PROCEDURAL HISTORY: On January 18, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not file a weekly claim for benefits in accordance the Department's rules (decision # 115032). Claimant filed a timely request for hearing. On February 14, 2017, ALJ K. Monroe conducted a hearing, and on February 17, 2017 issued Hearing Decision 17-UI-77268, affirming the Department's decisions. On February 25, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision.

FINDINGS OF FACT: (1) Sometime around early December 2015, claimant filed an initial claim for benefits. The benefit year end for that claim was the week ending December 3, 2016, or at the end of benefit week 48-16.¹ Claimant filed weekly claims for benefits under this claim until the week of October 30 through November 5, 2016, week 44-16. Claimant did not claim weekly benefits for weeks 45-16 through 47-16.

(2) On Monday, January 2, 2017 (during benefit week 01-17), claimant accessed the Department's online system and tried to file a claim for benefits for the week of December 25 through December 31, 2016 (week 52-16). The system would not accept the weekly filing and an on-screen notice appeared informing claimant that he was required to open a new initial claim, with a new benefit year end, to continue receiving benefits. Claimant completed the steps indicated to file a new initial claim, the new claim was processed and opened, with a benefit year ending December 30, 2017, or at the end of benefit week 52-17. Claimant believed that by opening the new initial claim he had also filed a weekly benefit

¹ We take notice of these facts, which are contained in Employment Department records. Any party who objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record at EAB.

claim for the week of December 25 through December 31, 2016 (week 52-16) since his attempt to file a claim for that week had generated the notice requiring him to open a new initial claim and he had done so.

(3) On January 12, 2017, claimant received a notice from the Department informing him that a new initial claim had been opened for him. When claimant saw that no mention was made of his having filed a claim for benefits for week 52-16, he telephoned the Department. The representative with whom claimant spoke told him he could not claim benefits for a week prior to the week in which his new initial claim was opened, or for a week prior to week 01-17, and his claim for benefits for week 52-16 would not be allowed. Claimant insisted, and the representative took his claim over the phone for benefits for week 52-16.

CONCLUSIONS AND REASONS: Claimant did not file his claim for benefits for week 52-16 in accordance with the Department's regulations. Claimant is not eligible to receive benefits for that week.

ORS 657.155(b) and ORS 657.260(1) provide that unemployed individuals are eligible to receive benefits for a particular week only if the individual has claimed benefits for that week in accordance with the Department's regulations. OAR 471-030-0040(3) (February 23, 2014) states 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 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. An authorized representative of the Employment Department will backdate an *additional or reopened claim* to the calendar week immediately preceding the week in which the request to backdate was made when a claimant requests backdating of the additional or reopened claim (emphasis added).

The plain language of OAR 471-030-0040(3) bars claimant's claim for benefits for week 52-16 because even if he had actually claimed benefits that week when he filed his new initial claim on Monday, January 2, 2017, the first effective week he could claim would still have been week 01-17, beginning on Sunday, January 1, 2017 and neither Department representatives, the ALJ or EAB are authorized to backdate any weekly claim for benefits to a week earlier than the first effective week that the claim was filed. Claimant's position as stated at hearing and in his written argument is that he should not be denied benefits for week 52-16 through the application of OAR 471-030-0040(3) to his claim because it is not fair, since OAR 471-030-0040 is not specifically referenced in the Claimant Handbook and claimant thought he had claimed benefits for week 52-16 when he opened his new initial claim on January 2, 2017. As to what claimant may have thought he had done when filing the new initial claim, it appears that he did not understand how OAR 471-030-0040(3) operated. However, claimant did not contend that he was misled to his detriment by the Department or its representatives about the impact of OAR 471-030-0040(3) on his claim for benefits for week 52-16, and a misunderstanding of the type claimant is not adequate to invoke equitable principles that might preclude the Department from applying OAR 471-030-0040(3). This especially so given that OAR 471-030-0040 was adopted after a public rulemaking process and does not contain any exceptions to its across-the-board application to all claims. We also reject claimant's implicit contention in his written argument that he was misled about the impact OAR 471-030-0040(3) would have on his claim for weekly benefits since that regulation was not identified or referred to in the Claimant Handbook, which is intended provide a summary of the laws and rules applicable to unemployment insurance claims. The Handbook clearly states, "This Handbook

explains what you need to know while claiming unemployment insurance (UI) benefits. This Handbook does not cover all laws and rules that affect unemployment benefits. You can find additional information, including laws and rules, on this website [link provided].” *See* http://www.oregon.gov/Employ/Unemployment/Claimant_Handbook/Pages/default.aspx. The Handbook clearly notified claimant that it was not a comprehensive compendium of all conceivable laws and rules having impacts on unemployment benefit claims, gave sufficient information to allow claimant to access the actual laws and regulations affecting claims and did not reasonably mislead claimant into exclusive reliance on it. Finally, claimant did not argue that he failed to file his claim for benefits for week 52-16 until January 13, 2017 due to reliance on the Claimant Handbook or the failure of the Handbook to mention OAR 471-030-0038(3). While we are sympathetic to claimant’s position, there are no legally cognizable grounds to preclude the Department from applying OAR 471-030-0040(3) and to prevent him from receiving benefits for week 52-16.

Claimant did not file his claim for benefits for week 52-16 in accordance with the Department’s regulations. Claimant is not eligible to receive benefits for that week.

DECISION: Hearing Decision 17-UI-77268 is affirmed.

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

DATE of Service: March 29, 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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