

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0318

Reversed
Requests to Backdate Allowed

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). On February 9, 2017, EAB issued Appeals Board Decision 2017-EAB-0084, reversing Hearing Decision 17-UI-75117, and remanding the matter to the ALJ for further development of the record. On March 7, 2017, ALJ Shoemake conducted a hearing on remand, and on March 10, 2017, issued Hearing Decision 17-UI-78636, adopting her previous hearing decision (Hearing Decision 17-UI-75117). On March 14, 2017, claimant filed an application for review with EAB.

FINDINGS OF FACT (1) On September 3, 2016, claimant filed an initial claim for unemployment benefits. 01/13/17 Hearing, Audio recording at 30:02. The Department did not process this initial claim until September 13, 2016, however. 03/17/17 Hearing, Audio recording at 13:53. On September 5, 2016, claimant attempted to file her claim for benefits for week 35-16, but was unable to do so because the Department had not yet processed her initial claim. 03/17/17 Hearing, Audio recording at 12:45.

(2) On September 13, 2016, claimant filed an online claim for unemployment benefits for week 36-16 (September 4 through 10, 2016). 01/13/17 Hearing, Audio recording at 19:50.

(3) By letter dated September 19, 2016, the Department informed claimant that because she had claimed week 36-16 before restarting her claim, she needed to restart her claim; to do so, the letter explained that she must provide information requested in the letter, and submit her response to the Department within seven days. The letter warned claimant that failure to timely respond to the letter would result in denial of her claim, and cautioned her not to attempt to restart her claim using the Department's online system. Exhibit 1. On September 22, 2016, the Department received claimant's response to its September 19 letter. 03/17/17 Hearing, Audio recording at 11:22.

(4) On September 24, 2016, claimant attempted to file an online claim for unemployment benefits for week 37-16 (September 11 through 17, 2016), but was unable to do so. Claimant then filed her claim through the Department's automated telephone system and was informed that this transaction had been completed. 03/17/17 Hearing, Audio recording at 16:13.

(5) By letter dated October 1, 2016, the Department informed claimant that because she had claimed week 37-16 before restarting her claim, she needed to restart her claim for week 37-16. The October 1 letter contained language identical to that in the September 19 letter regarding the need to provide information requested in the letter within seven days, the consequence of failing to respond, and a warning that claimant should not attempt to restart her claim through the Department's online system. Exhibit 1. On October 5, 2016, the Department received claimant's response to its October 1 letter.

(6) On September 29, 2016, claimant contacted the Department and spoke with a representative regarding a number of subjects, including backdating her claim. 03/17/17 Hearing, Audio recording at 28:25.

(7) The Department denied claimant's claim for benefits for week 36-16 and 37-16.

CONCLUSION AND REASONS: We disagree with the ALJ and conclude that claimant filed additional or reopened claims and is entitled to backdate them.

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 s 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. A Department representative will backdate an additional or reopened claim to the calendar week immediately preceding the week in which the request to backdate is made. *Id.*

The record shows that when claimant filed her initial claim for benefits on September 4, 2016, the Department did not process the claim until September 13, 2016, for reasons that the Department did not explain. 03/17/17 Hearing, Audio recording at 13:23. Due to the Department's delay, claimant could not file a claim for benefits for week 35-16 (August 28 through September 3, 2016). As a result, Department records showed there was a break in reporting when claimant filed her claim for week 36-16 (September 4 through 10, 2016). The Department therefore considered claimant's September 13, 2016 claim for week 36-16 (September 4 through 10, 2016) to be prematurely filed, because she needed to reopen her claim due to the break in reporting. By letter dated September 19, 2016, the Department instructed claimant what she needed to do to restart her claim; claimant complied with these instructions. When claimant filed her claim for benefits for week 37-16 (September 11 through 17, 2016) on September 24, 2016, the Department also considered this claim to be prematurely filed because it believed that claimant needed to restart her claim.¹ By letter dated October 1, 2016, again instructed claimant how to restart her claim; claimant complied with these instructions. We construe claimant's

¹ The Department representative never explained why the Department sent claimant a *second* letter notifying her that she needed to restart her claim, after the Department had received claimant's timely response to the *first* letter notifying her that she needed to restart her claim.

September 13 and September 24 contacts with the Department as requests to backdate her claims. Under the applicable rules, she is entitled to have her claims backdated to the calendar weeks immediately preceding her requests – to week 36-16 and 37-16.

The Department representative testified, that claimant was denied benefits for weeks 36-16 and 37-16 because she did not restart her claims; the representative never provided a reason why claimant's timely responses to the September 19 and October 1 letters were inadequate to restart her claims. 03/17/17 Hearing, Audio recording at 11:47. We conclude, however, that the doctrine of equitable estoppel applies to bar the Department from asserting that claimant did not restart her claims. 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)).

Here, the Department had knowledge of the facts concerning claimant's claim history, based on its records. It informed claimant that providing timely responses to the September 19 and October 1 letters would restart her claims for unemployment benefits. That assertion was false, because the Department did not restart her claims even after it received claimant's timely responses to its letters. Claimant relied on the Department's representation that her responses to the letter were sufficient to properly claim benefit for weeks 36-16 and 37-16, and her reliance was reasonable.² The doctrine of equitable estoppel therefore prevents the Department from denying claimant's claims for benefits for week 36-17 and 37-16 because she failed to restart her claims.

For the reasons stated above, claimant is entitled to backdate her claims for weeks 36-16 and 37-16.

DECISION: Hearing Decision 17-UI-78636 is set aside, as outlined above.

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

DATE of Service: April 3, 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

² When the ALJ asked the Department representative why claimant's September 24 claim filing for week 37-16 was not considered a contact sufficient to constitute a backdating request, the representative responded that claimant should have called the Department, because she needed to restart her claim. 03/17/17 Hearing, Audio recording at 17:31. Claimant had no reasonable basis for concluding that she needed to contact the Department, however. Because she had timely responded to the Department's September 19 letter and had successfully filed her claim for week 37-16 through the Department's automated telephone system, she had no indication that there was any problem with her claims.

'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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