

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0336

Reversed
Eligible – Week 41-16

PROCEDURAL HISTORY: On November 10, 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 # 152033). Claimant filed a timely request for hearing. On February 21, 2017, ALJ Frank conducted a hearing, and on March 1, 2017, issued Hearing Decision 17-UI-77947, affirming the Department’s decision. On March 20, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On October 8, 2016, claimant filed a valid initial claim for unemployment benefits.

(2) Benefits were claimed for the week October 9 through October 15, 2016 (week 41-16), a week that did not coincide with the first effective week of claimant’s initial claim. When claimant attempted to file his claim for week 41-16 using the Department’s automated system on both October 16 and 17, he was unsuccessful after receiving a message that to file his weekly claim, his initial claim needed to be reopened. Under Department rules, for a claim for week 41-16 to be filed timely, it had to be filed by October 22, 2016.

(3) On October 17, 2016, claimant contacted a Department representative by phone and inquired about the difficulty he had with filing his claim using the automated system. The representative took information from claimant about the wages he earned during week 41-16 and at the end of their conversation told him he “was ok that everything had been done.” Audio Record ~ 11:45 to 13:25. Claimant believed he had filed his weekly claim for week 41-16.

(4) On or about October 27, 2016, claimant learned that his claim for week 41-16 had not been filed; so on that date he returned to the Department’s automated system and provided the necessary information to complete the claim filing process. A short time later, the Department determined that claimant was ineligible for benefits for that week because the claim had not been filed by October 22, 2016.

CONCLUSIONS AND REASONS: Claimant's claim for week 41-16 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 17-UI-77947, the ALJ found that claimant attempted to file his claim for week 41-16 on October 16 and 17, was unsuccessful in doing so due to the need to reopen his claim, and was only able to successfully file his claim on October 27, 2016. The ALJ then concluded that claimant was ineligible for benefits for that week, reasoning:

The record contains no evidence of factors that would serve to exempt claimant from [the Department's regulations regarding timely filing]; week 41-16 was not the first effective week of the claim, and claimant does not customarily file continued claims in writing. Because the rule contains no "good cause" provisions, claimant's... reasons for the delayed filing are immaterial.

Hearing Decision 17-UI-77947 at 2. We disagree, and conclude that the doctrine of equitable estoppel applies to claimant's circumstances. 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 SOS 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, claimant relied on a Department representative's false representation on October 17, 2016 that he "was ok that everything had been done" regarding his claim and did not actually complete the claims filing process for that week until October 27, after he learned everything had not been done. By that time, his claim was untimely under the Department's rules. Since claimant made a reasonable and good faith effort to timely file his weekly claim for the week at issue on both October 16 and 17, which, but for the representative's misleading comment, would have been timely, 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 timely file his claim for benefits for week 41-16 or that he did not comply with OAR 471-030-0045(4) for that benefit week.

Claimant timely filed his claim for benefit week 41-16. Claimant is eligible to receive benefits for that week.

DECISION: Hearing Decision 17-UI-77947 is set aside, as outlined above.¹

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

DATE of Service: April 6, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.

¹ This decision reverses a hearing decision that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.