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State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0807

Hearing Decision 17-UI-85970 Dismissed – Benefits Were Allowed
Hearing Decision 17-UI-85968 Dismissed – Benefits Were Allowed
Hearing Decision 17-UI-85946 Affirmed – Late Claims Denied
Hearing Decision 17-UI-85950 Affirmed – Backdating Request Denied
Hearing Decision 17-UI-85944 Reversed & Remanded

PROCEDURAL HISTORY: On March 6, 2017, the Oregon Employment Department (the Department) served three notices of three administrative decisions: decision # 134635 concluded claimant's claims for December 11, 2016 through December 31, 2016 were denied because they were claimed prior to the date of her initial claim; decision # 135511 concluded claimant's claims for January 1, 2017 to January 28, 2017 were denied because they were filed late; and decision # 142613 concluded that claimant was ineligible for benefits from January 1, 2017 to January 28, 2017 and February 5, 2017 to February 11, 2017 because she did not actively seek work during each of those weeks. On March 17, 2017, claimant filed timely requests for hearing on all three decisions.

On March 27, 2017, the Department served two additional notices of two administrative decisions: decision # 114155 concluded that claimant was ineligible for benefits from February 26, 2017 to March 4, 2017 because she did not actively seek work during each of those weeks; and decision # 115021 concluded that claimant's request to backdate her restarted claim to the week of February 26, 2017 to March 4, 2017 was denied. On April 7, 2017, claimant filed timely requests for hearing on both of those decisions.

On May 17, 2017, the Office of Administrative Hearings mailed notice of a consolidated hearing scheduled for June 9, 2017. On June 9, 2017, ALJ S. Lee conducted the hearing, and on June 16, 2017 mailed five hearing decisions: Hearing Decision 17-UI-85944 modified decision # 134635, concluding that claimant did not file claims for weeks prior to her initial claim filing but benefits were still denied because her claims for benefits for each of the weeks at issue in that decision were filed late; Hearing Decision 17-UI-85946 affirmed decision # 135511, concluding that claimant's claims for January 1, 2017 to January 28, 2017 were filed late; Hearing Decision 17-UI-85970 reversed decision # 142613, concluding that claimant did actively seek work and was eligible for benefits for the weeks of January 1,

2017 to January 28, 2017 and February 5, 2017 to February 11, 2017; Hearing Decision 17-UI-85968 reversed decision # 114115, concluding that claimant did actively seek work and was eligible for benefits for the week of February 26, 2017 to March 4, 2017; and Hearing Decision 17-UI-85950 affirmed decision # 115021, concluding that claimant's restarted claim could not be backdated to the week of February 26, 2017 to March 4, 2017.

On July 5, 2017, claimant filed applications for review of all five hearing decisions with the Employment Appeals Board (EAB). Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 17-UI-85946, 17-UI-85950, 17-UI-85970, 17-UI-85968 and 17-UI-85944. For case-tracking purposes, this decision is being issued in quintuplicate (EAB Decisions 2017-EAB-0804, 2017-EAB-0805, 2017-EAB-0806, 2017-EAB-0807 and 2017-EAB-0808).

In written argument, as she had during the hearing, claimant asked for leeway or leniency with respect to the dates she filed her claims for unemployment insurance benefits during the weeks at issue, citing to her difficult personal circumstances, including domestic violence, threats of criminal violence toward her, stalking, homelessness, health and mental health issues, among other things, as having prevented her from complying with the Department's filing rules. Unfortunately, with respect to filing claims for benefits and backdating, the Department's rules do not allow the deadlines to be extended or modified for any reason, even if an individual might have had good reasons for not being able to file before the established deadlines lapsed. Therefore, while we have heard claimant about the circumstances that caused her to ask for filing deadline extensions or led to her to ask that her restarted claim be backdated more than seven days, and we have read and understand her written argument to that effect, there are, unfortunately, no provisions in the laws or rules that would allow us to grant claimant's requests.

CONCLUSIONS AND REASONS: Claimant's applications for review of Hearing Decisions 17-UI-85970 and 17-UI-85968 present no justiciable controversy and must be dismissed. Claimant's late claims for the weeks of January 1, 2017 to January 28, 2017 are denied, as is her request to backdate her restarted claim to the week of February 26, 2017 to March 4, 2017. Hearing Decision 17-UI-85944 must be set aside, and remanded to the Office of Administrative Hearings for additional proceedings consistent with this order.

Hearing Decision 17-UI-85970 and Hearing Decision 17-UI-85968: Hearing Decisions 17-UI-85970 and 17-UI-85968 both deemed claimant eligible for benefits for the entirety of the periods at issue. Although we note that claimant might be denied benefits for some of the same weeks covered in those decisions because of Hearing Decision 17-UI-85944, no portion of Hearing Decisions 17-UI-85970 and 17-UI-85968 were adverse to claimant or had any practical effect on her rights or interests, nor has claimant assigned error to or requested reversal of any portion of those decisions. In consideration of our obligation to issue decisions that are consistent with sound principles governing judicial review and address only existing controversies between parties, we decline to address matters that will have no practical effect on the rights of the parties to the controversy. *See Barcik v. Kubiacyk*, 321 Or 174, 895 P2d 765 (1995); *Brunnett v. PSRB*, 315 Or 402, 848 P2d 1194 (1992). Because these two cases present no justiciable controversy, the applications for review of Hearing Decisions 17-UI-85970 and 17-UI-85968 are **dismissed**.

Hearing Decision 17-UI-85946: EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the hearing decision under review is **adopted**. Claimant’s late claims for benefits for the weeks of January 1, 2017 to January 28, 2017 are therefore denied.

Hearing Decision 17-UI-85950: EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the hearing decision under review is **adopted**. Claimant’s request to backdate her restarted claim to the week of February 26, 2017 to March 4, 2017 is therefore denied.

Hearing Decision 17-UI-85944: With respect to the date of claimant’s initial claim filing, claims for benefits “shall be filed in accordance with such regulations as the Director of the Employment Department may prescribe.” ORS 657.260(1); *see also* ORS 657.155. The Department’s rules define an “initial claim” as “a new claim that is a certification by a claimant completed as required by OAR 471-030-0025 to establish a benefit year or other eligibility period.” OAR 471-030-0040(1)(b). OAR 471-030-0025 lists information claimants must “furnish to” the Department “[w]ith all claims.” “For the purposes of filing an initial, additional, or reopened claim . . . [w]hen filed by Internet, the date of filing shall be the initial date of transmission of the online claim;” “[a]n incomplete certification must be completed and returned within seven business days from the date of notification that the original was incomplete to preserve the original date of filing.” OAR 471-030-0040(2)(d) and (2)(f). Regardless of the circumstances, an individual may only be paid benefits for weeks that occur “during the benefit year” that is established by the initial claim filing. ORS 657.150(1).

The Department issued decision # 134635, finding as fact that claimant did not file her initial claim for benefits in this case until January 1, 2017.¹ January 1, 2017 was, therefore, the start of claimant’s benefit year; the Department concluded that because claimant’s claims for the weeks of December 11, 2016 to December 31, 2016 preceded her benefit year, and benefits are only payable for weeks “during the benefit year,” benefits were not payable to claimant for those weeks.

Based solely on claimant’s testimony during the June 9th hearing, however, the ALJ found as fact that claimant attempted to file her initial claim for benefits on December 12, 2016 and “believed” she had successfully done so, and therefore concluded that claimant actually filed her initial claim for benefits on the date of her December 12, 2016 attempt.² The ALJ therefore concluded that claimant’s claims for the weeks of December 11, 2016 to December 31, 2016 did not precede the initial claim filing or benefit year in this case and she could not be denied benefits for those weeks on that basis.³ We disagree with the ALJ that the record supports such a conclusion.

Under the rules referenced, above, in order to establish that claimant filed her initial claim on December 12, 2016, there must be evidence establishing that it is more likely than not that claimant “furnish[ed]” a

¹ We infer that the Department used the date of January 1, 2017 as the effective date of claimant’s claim because that date fell on the first day of the Department’s Sunday-through-Saturday week in which the actual filing occurred. Evidence gathered at the hearing suggests that although the effective date of claimant’s claim might have been January 1st, the actual filing date was January 4, 2017.

² Hearing Decision 17-UI-85944 at 1-2.

³ *Id.* at 3.

required set of information to the Department on that date, and that a “transmission of the online claim” occurred on that date. *See* OAR 471-030-0025, OAR 471-030-0040(2). In the absence of a transmission, “to preserve the original [December 12th] date of filing,” claimant’s incomplete certification must have been completed and returned within seven days of the date of notification that the original filing attempt was incomplete. We are unable to conclude that claimant furnished information through a transmission to the Department on December 12th, or that she completed a partial initial claim filing within a seven-day period, on the basis of information in this record.

Claimant testified at the hearing that she made an attempt to file an initial claim on December 12th, saw a screen that said “congratulations” upon filing her claim but due to a technical malfunction either with the online claim filing system or the printer she was unable to print a confirmation that she had successfully filed her claim. Claimant further testified that Department employees were with her at the time that occurred and observed the malfunction. The ALJ did not ask the Department’s witness why the Department did not consider December 12th as claimant’s initial filing date, whether there were records of claimant’s December 12th filing attempt, whether anyone at the WorkSource office at which claimant made the attempt kept record of claimant’s attempted filing, reported a technical problem with either the online claim filing system or a printer on December 12th, whether there is record of an outage of the online claim filing system that day, whether the Department’s online claim filing system tracks or keeps record of any partial attempts by claimants to file initial claims that are not successful, and whether or not the Department has record of such an event happening on December 12th. With respect to whether claimant may “preserve the original date of filing” in this matter based on her December 12th attempt and January 4th filing, the ALJ did not ask either party whether or not there was notice of an incomplete certification or the circumstances under which an individual might receive such notice, or otherwise develop the record sufficiently to determine whether claimant’s December 12th initial claim filing date may be preserved in accordance with the Department’s rules. Because the ALJ did not provide the Department witness with the opportunity to produce such evidence, or elicit additional information from claimant about her attempt to file her initial claim online on December 12th, or why she waited from December 12th to January 4th before completing her initial claim, the record is incomplete and this case must be remanded for evidence about the date of claimant’s initial claim.

In the event that the record at the hearing substantiates that December 12th was claimant’s initial claim filing date, and that the weeks of December 11th through December 31st were not weeks claimed prior to claimant’s benefit year, the record was also not sufficiently developed as to the date claimant filed her weekly claims for those weeks. We have thoroughly reviewed the record in this matter and it appears that the ALJ found as fact – without having asked either claimant or the Department to establish the date upon which claimant filed weekly claims for the weeks of December 11, 2016 to December 31, 2016 – that claimant filed those weekly claims on February 25, 2017.⁴ It appears that the only location of that information in this record was the Department’s notice of decision # 134634 which, although a record document, is not evidence, nor does it appear that the ALJ took notice of any Department records establishing the filing date. We also note that although decision # 134634 states that February 25th was the date claimant filed her weekly claims, the Department’s records suggest the filing date might actually have been February 27, 2017. The ALJ concluded on the basis of her finding that claimant filed her claims for December 11th through December 31st on February 25 that her claims were late and had to

⁴ *Id.* at 2.

be denied.⁵ Because there is no evidence in the record to support that conclusion, no evidence in the record as to what the actual filing date was, and because we decline to take notice of a material fact, particularly where, as here, the Department's records about the date are contradictory, the record was not sufficiently developed and the ALJ must ask the parties on remand to establish the actual date upon which claimant filed her weekly claims for benefits for the weeks of December 11, 2016 to December 31, 2016.

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). Because the ALJ failed to develop the record necessary for a determination of the date of claimant's initial claim filing and filing date of the three weekly claims at issue in Hearing Decision 17-UI-85944, Hearing Decision 17-UI-85944 is reversed, and this matter is remanded for development of the record.

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 17-UI-85944 or return this matter to EAB. Only a timely application for review of the subsequent hearing decision will cause this matter to return to EAB.

DECISION: Hearing Decisions 17-UI-85946 and 17-UI-85950 are affirmed. Claimant's applications for review of Hearing Decisions 17-UI-85970 and 17-UI-85968 are dismissed; Hearing Decisions 17-UI-85970 and 17-UI-85968, which allowed claimant benefits for the weeks of January 1, 2017 to January 28, 2017, February 5, 2017 to February 11, 2017 and February 26, 2017 to March 4, 2017 remain undisturbed. Hearing Decision 17-UI-85944 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: July 17, 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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⁵ *Id.*