

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1103

Affirmed
Ineligible

PROCEDURAL HISTORY: On July 21, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not eligible for benefits because she failed to register for work in accordance with the Department's requirements. Claimant filed a timely request for hearing. On August 22, 2017, ALJ Amesbury conducted a hearing, and on August 25, 2017 issued Hearing Decision 17-UI-91236, affirming the Department's decision. On September 13, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's argument to the extent it was relevant and based upon the hearing record.

FINDINGS OF FACT: (1) On June 19, 2017, claimant filed an initial claim for unemployment insurance benefits. She filed a weekly claim for the week of July 2, 2017 to July 8, 2017 (week 27-17), the week at issue.

(2) Claimant filed her initial claim by telephone. A Department employee told claimant during the call that she did not need to do anything else at that time, but also told her that the Department would be sending a letter to her in the mail and contacting her if they had any questions.

(3) On June 20, 2017, the Department sent claimant a letter stating that she was required to complete the welcome process, including updating her iMatchSkills profile and speaking with a Department representative. The letter stated that the due date for claimant to complete the welcome process was July 5, 2017. The U.S. Postal Service did not return the letter to the Department as undeliverable.

(4) On July 5, 2017, the deadline for claimant to complete the welcome process expired. The same day, another Department employee called claimant and told her that her case was in review and claimant did not need to do anything at that time. During the call, claimant told the employee that she was starting a new job on July 6, 2017. Neither claimant nor the employee mentioned the welcome process during the call.

(5) On July 11, 2017, the Department sent claimant a letter informing her that her weekly claim for benefits for the week 27-17 was denied because she had not yet completed the welcome process.

(6) Claimant called the Department several times in response to the July 11th letter. On July 13, 2017, the Department employee with whom claimant spoke instructed claimant that she needed to complete the welcome process in order to be approved for benefits. On July 27, 2017, claimant was again advised to complete the welcome process. On August 1, 2017, claimant completed the welcome process.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant was not eligible for benefits during the weeks at issue.

ORS 657.155(1)(a) and 657.159 require that individuals register for work with the Department as a condition of being eligible for unemployment insurance benefits. Unless exempt, individuals are required to submit information required by the Department to carry out job placement services “concurrent with, or as soon as possible following, the filing of an initial claim for unemployment insurance benefits.” OAR 471-020-0020.¹

On June 20th, at the latest, the Department specifically instructed claimant by letter to complete the welcome process by updating her iMatchSkills profile and speaking with a Department representative. The letter was not returned to the U.S. Postal Service and it is presumed that claimant received it. She did not register for work by the July 5th deadline, however, and she is therefore ineligible for benefits based upon her failure to register for work.

Claimant argued that she should not be deemed ineligible based upon her failure to complete the welcome process because the Department communicated to her on at least two occasions prior to the deadline that she did not need to do anything else with respect to her claim. Claimant’s argument is construed as a claim that the Department should be estopped from denying her benefits because her ineligibility was the result of false or misleading information the Department provided to her.

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)).

Although the preponderance of the evidence suggests that claimant was told by a Department employee on June 19th that she did not need to do anything else with regard to her benefits at that time, claimant admitted that the Department employee also told her during the same call that she would be sent a letter with additional information and that she would receive a call if there were any additional questions about her claim. The Department employee’s words therefore reasonably informed claimant that he did not have knowledge of all the facts at the time he told her she did not need to do anything else, and

¹ The record fails to show that the exemptions set forth in OAR 471-020-0021 apply in this case.

reasonably communicated to her that additional things were going to happen on her claim. Any reliance claimant made was therefore based upon only a portion of what the Department employee told claimant on June 19th, and the rest of his statements and the letter sent to her the following day reasonably communicated to claimant that she did, in fact, have additional tasks to do with regard to her claim for benefits.

The preponderance of the evidence again suggests that a different Department employee told claimant on July 5th that claimant did not need to do anything additional with respect to her claim. Notably, neither claimant nor the Department employee discussed or mentioned the welcome process or the June 20th letter that had specifically instructed claimant to register for work, and the suggestion that claimant did not have anything else to do with regard to her claim was contrary to the Department's June 20th letter. However, the Department employee's silence about the welcome process requirement did not alleviate claimant's responsibility to complete the welcome process, and any reliance claimant made upon the Department employee's silence on that issue was unreasonable in consideration of the totality of the circumstances involved.

For those reasons, we conclude that claimant did not reasonably rely upon misinformation from the Department with respect to completing the welcome process, and the Department is therefore not estopped from denying her benefits for the week at issue based upon her failure to complete the welcome process by July 5th.

DECISION: Hearing Decision 17-UI-91236 is affirmed.

J. S. Cromwell and D. P. Hettle.

DATE of Service: October 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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