

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

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1359

Affirmed
Request to Backdate Claim Denied

PROCEDURAL HISTORY: On September 21, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision denying claimant's request to backdate his claim to July 23, 2017 (decision # 113921). On October 5, 2017, claimant contacted the Department for information and that contact was construed as a timely request for hearing on decision # 113921. On November 8, 2017, ALJ Seideman conducted a hearing, and on November 16, 2017 issued Hearing Decision 17-UI-96945, affirming the Department's decision. On November 20, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

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

EVIDENTIARY MATTER: At hearing, claimant offered several screen shots of web addresses he allegedly visited when he sought to complete an initial application for benefits on July 24, 2017. The ALJ admitted 19 pages of those screen shots as Exhibit 3, but did not admit 4 pages of screen shots since they were for web addresses that did not appear on claimant's browser history for July 24, 2017, which was admitted into evidence as Exhibit 2. However, as discussed below, those 5 pages of screen shots are relevant to his matter and necessary to complete the record. Under OAR 471-041-0090(1) (October 29, 2006), the following screen shots that claimant sought to introduce into evidence are admitted as EAB Exhibit 1: Completed Employer Information; Tax Withholding; Alternative Base Year and Certification. A copy of EAB Exhibit 1 is included with this decision. Any party who objects to the admission of EAB Exhibit 1 must submit any such objections to this office in writing, setting forth the basis of the objection, within ten days of the date on which this decision is mailed. Unless such an objection is received and sustained EAB Exhibit 1 will remain a part of the record.

FINDINGS OF FACT: (1) On July 24, 2017, claimant went online to apply for unemployment benefits on the Department's website. While applying for benefits, claimant entered information on several pages on the only application for benefits form. At the same time as he was working on the application, claimant was also preparing for a job interview he was going to have later that day, researching the legality of the circumstances under which his employer had let him go and was tending to a "baby at home, too, that was screaming to be fed." Audio at ~41:10.

(2) Claimant thought that he completed the online application for benefits and thought that he transmitted it to the Department that day, but did not actually complete the application or transmit it to the Department. The Department did not receive a completed online initial application for benefits that originated from and was electronically transmitted by claimant on or about July 24, 2017, and did not process a claim for unemployment insurance benefits on claimant's behalf.

(3) By August 17, 2017, claimant had not received any benefits. Claimant called the Department to inquire about the status of his claim. At that time, claimant learned that the Department had no record of his claim, or that he had attempted to file an application for benefits. The Department took claimant's application over the phone and set up claimant's claim to be effective as of Sunday, August 13, 2017. During that call, claimant asked that his claim be considered to have been made on July 24, 2017, the date on which he attempted and thought he completed his application for benefits, which would have made his claim effective as of Sunday, July 23, 2017. As a result of that call, Claimant also learned for the first time that to receive benefits he was required to file weekly claims for them.

CONCLUSIONS AND REASONS: Claimant's request to backdate his unemployment insurance claim to July 23, 2017 is denied.

ORS 657.260(1) provides that claims for benefits shall be made in accordance with such regulations as the Director of the Employment Department may prescribe. OAR 471-030-0040(1)(b) (February 23, 2014) states that an "initial claim" is a new claim that is a certification by a claimant to establish a benefit year or other eligibility period. OAR 471-031-0040(2)(d) states that when filed by internet, the date of the filing shall be the initial dates of transmission of the online claim. An initial claim is effective the Sunday of the calendar week in which it is filed. OAR 471-030-0040(3).

Claimant argued that his claim should be effective July 23, 2017 based upon his attempted July 24, 2017 filing. Accordingly the issue is whether, within the meaning of OAR 471-30-0040(2)(d), claimant's application for unemployment insurance benefits was transmitted to the Department on July 24, 2017. Claimant did not dispute the testimony of the Department's representative that the Department did not receive an application for benefits on July 24, 2017 and had no record that claimant tried to file such an application. Claimant described his browser history from July 24, 2017 as comprehensively showing his activities on the Department's website that day and all web pages he visited to complete the process of applying online for benefits. Exhibit 1 at 1; Exhibit 2. However, comparing the screen shots that claimant presented against the entries in the browser history for July 24, 2017, it appears that claimant did not visit the web addresses corresponding to the final pages in the application process, including all of the screen shots included in EAB Exhibit 1. *See and compare* Exhibit 2 and EAB Exhibit 1. The screen shot titled "Certification," although not represented in complete form in EAB Exhibit 1, appears to have been the final application page on which claimant would have been expected to certify all information he had entered on the application was correct and, in the usual course, would then have clicked on a "submit" button to transmit the completed and certified application to the Department. EAB Exhibit 1 at 3. Most conspicuously, however, the web address for the certification page, <https://secure.emp.state.or.us/opcs4/la/lc-step9afm?ID=98848288&lang=E&app=IC>, is absent from claimant's browser history for July 24, 2017. Exhibit 2; EAB Exhibit 1 at 3. Based on the documents that claimant presented on his own behalf at hearing, it appears more likely than not that claimant did not submit or initiate the transmission of the application for benefits he filled out online on July 24, 2017

to the Department. That claimant likely did not take this final step is supported by the many distractions he testified he experienced while working on the application. Audio at ~41:10. As well, our conclusion that claimant did not submit or transmit the application to the Department is corroborated by his inability to recall whether or not he received a confirmation number for his application, when he would have been expected either to write such an important number down or save or print the page on which it was provided to him as proof of transmission, and he very likely would have recalled doing so. He was also uninformed about the process of making weekly benefit claims, and did not make any weekly claims, until a Department representative informed him of the process on August 17, 2017, when such information would have been supplied to him had he successfully submitted an online application for benefits to the Department. Audio at ~25:50, ~35:47. On this record, it is most likely that claimant did not transmit an electronic application for benefits to the Department on July 24, 2017, and first submitted a completed application on the phone with the Department on August 17, 2017.

Claimant argued at hearing and in his written argument that his unsubmitted application for benefits should nevertheless be considered to have been filed on July 24, 2017 because he filled out most parts of the online application that day and “my only obligation is to complete the application form.” Claimant’s Written Argument at 2. However, OAR 471-030-0040(2)(d) plainly states that the date an online claim is considered filed is when the claim is electronically *transmitted* to the Department (emphasis supplied). It appears claimant never transmitted the parts of the application he completed on July 24, 2017 to the Department nor did he certify the application. Because only transmitted and certified applications for benefits are valid under the applicable laws and rules, claimant’s request that his application be considered filed on July 24, 2017 must be denied.

Claimant’s application for benefits, or initial claim, was filed on August 17, 2017, and was effective as of Sunday, August 13, 2017. There is no basis in the statutes or regulations on which to backdate claimant’s claim earlier than August 13, 2017, or to make it effective as of Sunday, July 23, 2017. His request to backdate his claim to July 23, 2017 is, therefore, denied.

DECISION: Hearing Decision 17-UI-96945 is affirmed.

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

DATE of Service: December 22, 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.