

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0206

Affirmed
Ineligible Weeks 52-17 through 02-18

PROCEDURAL HISTORY: On January 25, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not eligible for benefits for the week of December 24 through December 30, 2017 (week 52-17) because he failed to register for work in accordance with the Department's requirements, and that he would remain ineligible until he completed his registration requirements. Claimant filed a timely request for hearing. On February 21, 2018, ALJ Murdock conducted a hearing, and on February 22, 2018, issued Hearing Decision 18-UI-103818, concluding that claimant was not eligible for benefits for the weeks December 24, 2017 through January 13, 2018 (weeks 52-17 through 02-18) because he failed to register for work in accordance with the Department's requirements. On February 27, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

With his application for review, claimant submitted a written argument in which he essentially asserted that first, the Department should be estopped from enforcing the registration requirement as a pre-condition for his benefit eligibility in this case because of allegedly misleading information provided by the Department in letters and phone contacts, and second, that the Department failed to provide him with adequate notice of the registration requirement and that its failure to do so resulted in his deprivation of substantive and procedural due process when it denied him benefits. Written Argument at 1 and 9. Claimant's arguments were not persuasive.

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)).

The record contains no evidence that the Department ever had any intention to induce claimant to ignore the registration requirements he was otherwise obligated to meet when it sent him letters and conducted interviews concerning his work separation, which was under investigation. Any statements in letters or made by a Department employee during interviews concerning his work separation to the effect that, “You will be contacted if more information is needed,” did not reasonably apply to the registration issue and claimant reasonably should have understood that from the context of the investigation and his prior experience in meeting the registration requirements concerning his 2016 claim. Accordingly, claimant’s estoppel argument is rejected.

With regard to the Department’s alleged failure to provide claimant with adequate notice, claimant did not dispute that the Department notified him of the registration requirement both online, when he filed his initial claim on December 11, 2017, and by mail on December 13, 2017, January 3, 2018 and January 17, 2018. With regard to the online notification, claimant explained only that he did not “observe” the notification presented to him at that time, despite the Department’s assertion that notification was provided via a “a screen that pops up” that included a paragraph explicitly stating, “You’re required to register in I-Match skills and have an individual review with Work Source Center staff. I-Match skills is the Employment Department’s tool that connects you with hired Employers. You’ll receive a letter in a few days telling you how to register and complete the review. Failure to complete your registration and individual review will result in a denial of benefits.” Transcript at 5, 29.

With regard to similar mail notifications of the registration requirement, claimant explained that he did not receive the initial December 13 notification letter although did receive the January 3 and January 17 notification letters. Transcript at 31-35. However, the Department’s witness explained that all three letters were generated by the same automated process, addressed to claimant’s address on file with the Department, and that the initial letter was not returned as undeliverable. Transcript at 10-17. Moreover, claimant explained that it was “possible” that he did not receive the December 13 letter because he lived in a residence with other individuals and his mail may have been mishandled or missed as a result, and he did not assert that his mail had been delivered to another address by mistake. Transcript at 29-30. More likely than not, claimant’s December 13 letter, which the ALJ explained presumptively was delivered to claimant’s address and gave him until December 27, 2017 to complete the registration requirements, was received at claimant’s residence address and claimant’s failure to read and respond to the Department’s registration notification contained therein, was not caused in any way by the Department.

EAB considered the remainder of claimant’s argument to the extent it was relevant and based upon the hearing record, which EAB reviewed in its entirety. On *de novo* review and pursuant to ORS 657.275(2), the hearing decision under review is **adopted**.

DECISION: Hearing Decision 18-UI-103818 is affirmed.

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

DATE of Service: April 4, 2018

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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