

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0495

Reversed
Eligible – Week 08-18

PROCEDURAL HISTORY: On March 30, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not timely file a continued claim for benefits in accordance with the Department’s rules and therefore was ineligible for benefits for the week of February 18 through February 24, 2018 (decision # 100532). Claimant filed a timely request for hearing. On April 24, 2018, ALJ Shoemake conducted a hearing, and on May 4, 2018 issued Order No. 18-UI-108751, affirming the Department’s decision. On May 11, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant’s written argument to the extent it was based on the hearing record. *See* ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006).

FINDINGS OF FACT: (1) On February 14, 2018, claimant filed an initial claim for unemployment insurance benefits.

(2) On March 1, 2018, claimant returned a Department representative’s call and spoke to him about a related claim matter. Claimant then added, “So I need to claim for this week [week 08-18] and he said well you can do that with me over the phone, and so over the phone I gave him...all the information...[in response]... to all the questions that [he asked and which] are asked when you claim for unemployment... and he said he would submit it.” Audio Record ~ 9:45 to 10:30. Based on the representative’s representations, claimant took no further action regarding filing a claim for that week, February 18 through 24, 2018 (week 08-18), the week at issue.

(3) On March 29, 2018, after claimant realized he had not received a benefit check for that week, he contacted the Department and learned that his claim for the week at issue had not been submitted as promised, and gave another individual the same information. However, he also was informed that filing a claim for the week at issue after March 3, 2018 was not timely.

CONCLUSIONS AND REASONS: We disagree with the ALJ. Claimant timely filed a continued claim for benefits in accordance with the Department’s rules.

ORS 657.155(1)(b) provides that an unemployed individual shall be eligible to receive benefits for any week only if the individual filed a claim for such benefits in accordance with regulations prescribed by the Department. ORS 657.260(1). OAR 471-030-0045(2) (February 23, 2014) requires a claimant “in order to obtain benefits” for any given week to file a “continued claim” for that week. A “continued claim” is one that “certifies...to the claimant’s status” during the week claimed. OAR 471-030-0045(1). An individual must file a continued claim no later than seven days following the end of the week for which benefits are claimed for it to be timely. OAR 471-030-0045(4). The individual may file the claim in person at any Employment Department office in Oregon, by mail, by fax, by internet, or by telephone. OAR 471-030-0045(3). The party seeking relief has the burden of persuasion. See *Porter v. Riverdale School Dist. No. 51 JT*, 21 Or App. 773, 536 P.2d 1265 (1975); *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

For claimant’s continued claim for benefits to be timely, he was required to file it with the Department by March 3, 2018. In Order No. 18-UI-108751, after finding that on March 1 claimant spoke to a Department representative by phone and “thought he claimed the [week at issue] when speaking to the representative but he did not,” and later filed it on March 29, 2018, the ALJ concluded that claimant failed to file his continued claim in a timely manner and therefore was ineligible for benefits for the week at issue.¹ However, the Department’s witness provided only hearsay evidence from Department records regarding claimant’s contacts with Department representatives on March 1, 2018. Absent a basis for concluding that claimant was not a credible witness, we gave his firsthand testimony under oath more weight than the Department’s hearsay evidence, and therefore found facts in accordance with his testimony on matters in dispute.

On March 1, 2018, claimant returned a representative’s call and spoke to him about a related claim matter and then added, “So I need to claim for this week and he said well you can do that with me over the phone and so over the phone I gave him...all the information...[in response]... to all the questions that [he asked and which] are asked when you claim for unemployment... and he said he would submit it.” Audio Record ~ 9:45 to 10:30. At hearing, claimant essentially asserted that based on the Department’s representative’s statement to him on March 1 that he would “submit” his benefit claim based on the information he had just obtained from claimant, the Department should be estopped from denying him benefits for week 08-18.

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)). Based on claimant’s account of his conversation with the Department representative on March 1, 2018, all of those elements have been met and it appears that the Department representative in question mistakenly failed to submit claimant’s claim for the week at issue after obtaining the relevant information from claimant over the phone. On this record, claimant justifiably relied on the representative’s statements that claimant could file his claim with him (“well you can do

¹ Order No. 18-UI-108751 at 1, 2.

that with me over the phone”) and that claimant did not need to do anything further (because “[the representative] would submit it.”).

On this record, claimant met his burden to establish that he filed his continued claim for the week at issue in a timely manner and that the Department is estopped from denying that fact. Accordingly, claimant is eligible for benefits for the week at issue (week 08-18) based on the timeliness of his claim filing.

DECISION: Order No. 18-UI-108751 is set aside, as outlined above.²

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

DATE of Service: June 13, 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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² This decision reverses an order that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.