

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-1021

Affirmed
Late Claim for Benefits Denied

PROCEDURAL HISTORY: On August 8, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was over paid \$246 in benefits for the week of January 28 through February 3, 2018 that she must repay (decision # 142941). On August 28, 2018, decision # 142941 became final without claimant having requested a hearing. On September 6, 2018, claimant filed a late request for hearing. On September 11, 2018, ALJ Kangas issued Order No. 18-UI-116321, dismissing claimant's request for hearing as untimely without a showing of good cause, subject to her right to renew her request by filing a response to an appellant questionnaire. On October 1, 2018, Order No. 18-UI-116321 became final without claimant having filed a response to the appellant questionnaire or an application for review with the Employment Appeals Board (EAB).

On September 25, 2018, the Department served notice of an administrative decision concluding that claimant filed a late claim for benefits for the week of August 12 through 18, 2018, and therefore denying her benefits for that week (decision # 71549). Claimant filed a timely request for hearing. On October 15, 2018, ALJ Snyder conducted a hearing, and on October 23, 2018 issued Order No. 18-UI-118599, affirming the Department's decision. On October 26, 2018, claimant filed an application for review with EAB. EAB considered the entire hearing record and claimant's written argument to the extent it was relevant, material and based on information received into evidence at the October 15, 2018 hearing. *See* OAR 471-040-0090 (October 29, 2006).

FINDINGS OF FACT: (1) On October 27, 2017, claimant filed an initial claim for benefits. After having restarted her claim several times, claimant filed weekly claims for benefits for the weeks from July 15 through August 11, 2018 (weeks 29-18 through 32-18).

(2) Prior to August 25, 2018, claimant received a letter from the Department accurately stating that she had been paid her maximum benefit amount on her October 27, 2017 initial claim for benefits. Claimant therefore stopped claiming benefits, and did not file a weekly claim for benefits for the week of August 12 through 18, 2018 (week 33-18), the week at issue.

(3) In early September 2018, claimant received notice from the Department that she was required to repay \$246 in benefits she received for the week of January 28 through February 3, 2018 (week 05-18). On September 4, 2018, claimant started working full time and, sometime between September 4 and 21, 2018, repaid the Department the \$246 in benefits.

(4) On September 21, 2018, claimant telephoned the Department and learned that because she had repaid the Department the \$246 in benefits she had received for week 05-18, she had \$246 in benefits remaining from the maximum benefit amount on her October 27, 2017 initial claim for benefits. Claimant therefore filed a weekly claim for benefits for week 33-18.

CONCLUSIONS AND REASONS: Claimant's late claim for benefits for week 33-18 is denied.

OAR 471-030-0045(4) (January 11, 2018) provides, in relevant part, that a continued claim for benefits must be filed no later than seven days following the end of the week for which benefits is claimed. Claimant therefore was required to file her claim for benefits for week 33-18 by August 25, 2018. Claimant did not file her claim for benefits for week 33-18 until September 21, 2018. Claimant therefore filed a late claim for benefits for week 33-18.

In written argument, as at hearing, claimant argued that she nevertheless should be paid benefits for week 33-18, asserting that she filed her claim late because she reasonably relied on the letter she received from the Department prior to August 25, 2018 stating that she had been paid her maximum benefit amount on her October 27, 2017 initial claim for benefits. Because there is no "good cause" exception to the requirements set forth in OAR 471-030-0045(4), we construe claimant's argument as an assertion that she should be paid benefits for week 33-18 under the doctrine of equitable estoppel. However, the doctrine of equitable estoppel "requires proof of a false representation made with the intention that it would induce action by the other party." *Keppinger v. Hanson Crushing, Inc.*, 161 Or App 424, 428, 983 P2d 1084 (1999) (citation omitted). Here, the Department's representation that claimant had been paid her maximum benefit amount on her October 27, 2017 initial claim for benefit was not false at the time. Nor does the record show that it was made with the intention that claimant would not file a timely claim for benefits for week 33-18. Claimant therefore is not entitled to benefits for week 33-18 under the doctrine of equitable estoppel.

Claimant's late claim for benefits for week 33-18 therefore is denied.

DECISION: Order No. 18-UI-118599 is affirmed.

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

DATE of Service: November 29, 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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