

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0067

Affirmed
Late Claims Denied
Ineligible Weeks 41-18 and 42-18

PROCEDURAL HISTORY: On November 30, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant filed late claims for benefits for the weeks including October 7 through October 13, 2018 (decision # 75129). Claimant filed a timely request for hearing. On January 2, 2019, ALJ S. Lee conducted a hearing, and on January 3, 2019, issued Order No. 19-UI-122063, concluding claimant filed late claims for benefits for the weeks including October 7 through October 20, 2018. On January 17, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On October 9, 2018, claimant filed an initial claim for benefits using the Department's online system. The first effective week of claimant's benefit year was the week including October 7 through October 13, 2018 (week 41-18).

(2) When claimant filed her initial claim online, a pop-up entitled, "What happens next?" appeared. Audio Record ~ 9:00 to 9:30. The pop-up explained that claims needed to be filed for every week of unemployment, including a waiting week. It also explained that filing online was the fastest way to file weekly claims, and that weekly claims could also be filed by phone. The pop-up stated that information about claims could be found in the claimant handbook and provided a link to the claimant handbook. Although claimant noticed that there was information about filing claims on the website page, she did not see the link to the claimant handbook.

(3) Prior to 2018, claimant last filed an initial claim for unemployment in 2015. At that time the Department mailed a copy of the claimant handbook to claimants. The Department ended the practice of mailing handbooks to claimants in 2016 and made the handbook accessible on the Department's website instead. Based on her previous claim, claimant assumed a handbook would be mailed to her.

(4) On October 12, 2018, the Department sent claimant a Wage and Potential Benefit Report. The report stated, "Additional information and explanations can be found in your Employment Department Claimant Handbook." Exhibit 1. The report did not state that a handbook would be mailed to claimant or

that the handbook was available online. A few days after claimant received the report, she contacted a local WorkSource Oregon office to discuss it but did not inquire about a handbook or request the opportunity to use one of the computers available for use by claimants to access the Department's website for information regarding jobs and claims.

(5) On November 2, 2018, claimant obtained internet access and also contacted a WorkSource Oregon office to inquire about a claimant handbook. She learned that it was available online and that her weekly claims for the weeks including October 7 through October 20, 2018 (weeks 41-18 and 42-18) were already late if filed. Claimant filed them that day anyway, those claims were denied for that reason, and claimant was not paid benefits. These are the weeks at issue.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ. Claimant filed late claims for benefits for the weeks including October 7 through October 20, 2018 (Weeks 41-18 and 42-18) and is ineligible for benefits for those weeks.

ORS 657.155(1)(b) provides that an unemployed individual shall be eligible to receive benefits with respect to any week only if the individual has made a claim for benefits with respect to such week in accordance with ORS 657.260. ORS 657.260(1) provides that claims for benefits shall be filed in accordance with such regulations as the Department may prescribe. A weekly claim for benefits must be filed no later than seven days following the end of the week for which benefits, waiting week credit, or non-compensable credit, or any combination of the foregoing is claimed, unless the claim is for the first effective week of the benefit year, in which case the week must be claimed no later than 13 days following the end of the week for which waiting week credit is claimed. OAR 471-030-0045(4) (January 11, 2018). Because the Department did not pay claimant benefits for the weeks at issue, claimant bears the burden to establish by a preponderance of the evidence that benefits should have been paid. *See Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

In the present case, claimant did not file her claim for benefits for the week ending October 13, 2018 (week 41-18), the first effective week of claimant's benefit year, within 13 days following the end of that week, or by October 26, 2018, as required under OAR 471-030-0045(4)(a). Nor did she file her weekly claim for benefits for the week ending October 20, 2018 (week 42-18) within seven days following the end of that week, or by October 27, 2018, as required under OAR 471-030-0045(4). Claimant's claims for benefits for weeks 41-18 and 42-18 were properly denied as late by both the Department and ALJ.

Claimant's assertions that she did not look online for the information she needed to timely file her claims because she did not personally have internet access until November 2, 2018, and because the October 12 report misled her into believing a handbook would be mailed to her, were not persuasive. Audio Record ~ 14:30 to 16:00. She used the internet to file her initial claim online via the Department's website on October 9, 2018 and did not dispute the assertion of the Department witness that the website she used to file included a link she could use to access the handbook, nor did she dispute that the Work Source office she visited days after receiving Form 196 provided free computer access to claimants. She also admitted that Form 196 did not state that a claimant handbook would be mailed to her. Audio Record ~ 17:00 to 18:00. Although it is clear that claimant did not understand that she had to seek the handbook online in order to receive a copy, the record fails to show that claimant was told or given

information suggesting that the Department would mail the handbook to her. Even if her assertions had been persuasive, OAR 471-030-0045(4) contains no good cause exception for filing claims late.

Claimant filed late claims for benefits for the weeks at issue. Accordingly, claimant is ineligible to receive benefits for those weeks.

DECISION: Order No. 19-UI-122063 is affirmed.

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

DATE of Service: February 14, 2019

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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Understanding Your Employment Appeals Board Decision

English

Attention – This decision affects your unemployment benefits. If you do not understand this decision, contact the Employment Appeals Board immediately. If you do not agree with this decision, you may file a Petition for Judicial Review with the Oregon Court of Appeals following the instructions written at the end of the decision.

Simplified Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

Traditional Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

Tagalog

Paalala – Nakakaapekto ang desisyong ito sa iyong mga benepisyo sa pagkawala ng trabaho. Kung hindi mo naiintindihan ang desisyong ito, makipag-ugnayan kaagad sa Lupon ng mga Apela sa Trabaho (Employment Appeals Board). Kung hindi ka sumasang-ayon sa desisyong ito, maaari kang maghain ng isang Petisyon sa Pagsusuri ng Hukuman (Petition for Judicial Review) sa Hukuman sa Paghahabol (Court of Appeals) ng Oregon na sinusunod ang mga tagubilin na nakasulat sa dulo ng desisyong ito.

Vietnamese

Chú ý - Quyết định này ảnh hưởng đến trợ cấp thất nghiệp của quý vị. Nếu quý vị không hiểu quyết định này, hãy liên lạc với Ban Kháng Cáo Việc Làm ngay lập tức. Nếu quý vị không đồng ý với quyết định này, quý vị có thể nộp Đơn Xin Tái Xét Tư Pháp với Tòa Kháng Cáo Oregon theo các hướng dẫn được viết ra ở cuối quyết định này.

Spanish

Atención – Esta decisión afecta sus beneficios de desempleo. Si no entiende esta decisión, comuníquese inmediatamente con la Junta de Apelaciones de Asuntos Laborales. Si no está de acuerdo con esta decisión, puede presentar una Petición de Revisión Judicial ante el Tribunal de Apelaciones de Oregon siguiendo las instrucciones escritas al final de la decisión.

Russian

Внимание – Данное решение влияет на ваше пособие по безработице. Если решение Вам непонятно – немедленно обратитесь в Апелляционный Комитет по Трудоустройству. Если Вы не согласны с принятым решением, вы можете подать Ходатайство о Пересмотре Судебного Решения в Апелляционный Суд штата Орегон, следуя инструкциям, описанным в конце решения.

Khmer

ចំណុចសំខាន់ – សេចក្តីសម្រេចនេះមានផលប៉ះពាល់ដល់អត្ថប្រយោជន៍គ្មានការងារធ្វើរបស់លោកអ្នក។ ប្រសិនបើលោកអ្នកមិនយល់អំពីសេចក្តីសម្រេចនេះ សូមទាក់ទងគណៈកម្មការឧទ្ធរណ៍ការងារភ្លាមៗ។ ប្រសិនបើលោកអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រេចនេះទេ លោកអ្នកអាចដាក់ពាក្យប្តឹងសុំឲ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

Laotian

ເອົາໃຈໃສ່ – ຄໍາຕັດສິນນີ້ມີຜົນກະທົບຕໍ່ກັບເງິນຊ່ວຍເຫຼືອການຫວ່າງງານຂອງທ່ານ. ຖ້າທ່ານບໍ່ເຂົ້າໃຈຄໍາຕັດສິນນີ້, ກະລຸນາຕິດຕໍ່ຫາຄະນະກຳມະການອຸທອນການຈ້າງງານໃນທັນທີ. ຖ້າທ່ານບໍ່ເຫັນດີນໍາຄໍາຕັດສິນນີ້, ທ່ານສາມາດຍື່ນຄໍາຮ້ອງຂໍການທົບທວນຄໍາຕັດສິນນໍາສານອຸທອນລັດ Oregon ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

Arabic

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Farsi

توجه - این حکم بر مزایای بیکاری شما تاثیر می گذارد. اگر با این تصمیم موافق نیستید، بلافاصله با هیأت فرجام خواهی استخدام تماس بگیرید. اگر از این حکم رضایت ندارید، می‌توانید با استفاده از دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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