

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0561

Affirmed
Late Claims Filed
Ineligible Weeks 13-21 through 18-21

PROCEDURAL HISTORY: On June 1, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant filed late claims for unemployment insurance benefits for the weeks from March 28, 2021 through May 8, 2021 (weeks 13-21 through 18-21) and was ineligible for benefits for those weeks (decision # 101527). Claimant filed a timely request for hearing. On July 8, 2021, ALJ Scott conducted a hearing, and on July 9, 2021 issued Order No. 21-UI-170057, affirming decision # 101527. On July 13, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On March 27, 2020, claimant filed an initial claim for unemployment insurance benefits. After her regular benefits were exhausted, claimant became eligible to receive extended benefits, Pandemic Emergency Unemployment Compensation (PEUC), under the CARES Act.¹ Claimant filed weekly, continued claims for those benefits online and received the benefits claimed until her initial claim expired on March 27, 2021.

(2) When claimant attempted to file a continued claim for benefits for the week of March 28, 2021 through April 3, 2021 (week 13-21), she received a message that her initial claim had expired and that she needed to file a new initial claim for benefits. Claimant attempted to file a new initial claim and thought she had done so, but was unsuccessful.

¹ Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, Pub. L. 116-136. Under the CARES Act, any state that entered into a federal-state agreement to administer benefits under the act would make payments of PEUC benefits to individuals who had exhausted all rights to regular compensation benefits under that state's law or federal law, provided the individual had no right to regular compensation benefits under the law of any other state. Pub. L. 116-136, § 2107(a)(2).

(3) Claimant did not receive benefits for week 13-21. Because claimant did not receive benefits for that week, claimant checked the status of her claim online and again received a message that she needed to file a new initial claim. After claimant made additional unsuccessful attempts to do so, she attempted to contact a Department representative by telephone, but those attempts also were unsuccessful. Eventually, claimant “just gave up.” Audio Record at 18:40 to 19:25.

(4) On May 18, 2021, a Department representative contacted claimant by telephone and helped claimant file a new initial claim.

(5) On May 19, 2021, claimant filed continued claims for benefits for each week from March 28, 2021 through May 8, 2021 (weeks 13-21 through 18-21), the weeks at issue.

CONCLUSIONS AND REASONS: Claimant filed late claims for benefits for each week from March 28, 2021 through May 8, 2021 (weeks 13-21 through 18-21) 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.

OAR 471-030-0040 (January 11, 2018) provides, in relevant part:

(1) As used in these rules, unless the context requires otherwise:

* * *

(b) An “initial claim” is a new claim that is a certification by a claimant completed as required by OAR 471-030-0025 to establish a benefit year or other eligibility period[.]

* * *

(2) For the purposes of filing an initial, additional, or reopened claim:

* * *

(d) When filed by Internet, the date of filing shall be the initial date of transmission of the online claim[.]

* * *

(3) An initial, additional, or reopened claim must be filed prior to or during the first week or series of weeks for which benefits, waiting week credit, or noncompensable credit is claimed and prior to or during the first week of any subsequent series thereafter. An initial claim is effective the Sunday of the calendar week in which it is filed[.]

* * *

OAR 471-030-0045 provides, in relevant part:

(1) As used in these rules, unless the context requires otherwise:

(a) “Continued Claim” means an application that certifies to the claimant’s completion of one or more weeks of unemployment and to the claimant’s status during these weeks. The certification may request benefits, waiting week credit, or non-compensable credit for such week or weeks. A continued claim must follow the first effective week of an initial, additional or reopen claim, or the claimant’s continued claim for the preceding week[.]

* * *

* * *

(4) A continued claim must be filed no later than seven days following the end of the week for which benefits, waiting week credit, or noncompensable credit, or any combination of the foregoing is claimed, unless:

(a) The continued 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[.]

* * *

In the present case, there is no dispute that claimant filed an initial claim and continued claims for PEUC benefits for each week at issue on May 19, 2021. Claimant did not file her continued claim for benefits for the week of March 28, 2021 through April 3, 2021 (week 13-21), the first effective week of claimant’s new benefit year, within 13 days following the end of that week as required under OAR 471-030-0045(4)(a). Nor did claimant file her weekly continued claims for PEUC benefits for each of the subsequent weeks from April 4, 2021 through May 8, 2021 (weeks 14-21 through 18-21) within seven days following the end of each of those weeks as required under OAR 471-030-0045(4). Accordingly, claimant’s claims for benefits for each week from March 28, 2021 through May 8, 2021 (weeks 13-21 through 18-21) were late, and claimant was ineligible for PEUC benefits for each of those weeks.

Claimant asserted that her benefits claims should be allowed because the Department’s online system and telephone system “failed” her because her attempts to file a new initial claim online and contact the Department by telephone to correct the situation were unsuccessful. Exhibit 1. However, OAR 471-030-0045(4) contains no good cause exception for filing claims late.

Claimant filed late claims for benefits for weeks 13-21 through 18-2, and therefore is not eligible to receive benefits for those weeks.

DECISION: Order No. 21-UI-170057 is affirmed.

D. Hettle and A. Steger-Bentz;
S. Alba, not participating.

DATE of Service: August 18, 2021

NOTE: This decision denies payment of your Unemployment Insurance (UI) benefits.

However, you may be eligible for Pandemic Unemployment Assistance (PUA) benefits for the period you are not eligible for other benefits as long as you are unable to work, unavailable for work, or unemployed due to the COVID-19 public health emergency. PUA is a new unemployment benefits program available through the Oregon Employment Department in response to the COVID-19 pandemic.

Visit <https://unemployment.oregon.gov> for more information, to apply for PUA, or to contact the Oregon Employment Department using the “Contact Us” form. You can also apply for PUA by calling 1-833-410-1004, but please be aware that the PUA staff cannot answer questions about this decision that denies payment of regular Unemployment Insurance (UI) benefits.

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 desisyon.

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 Empleo. Si no está de acuerdo con esta decisión, puede presentar una Aplicación 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 ໄດ້ ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

Arabic

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فوراً، و إذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للمراجعة القانونية بمحكمة الإستئناف بأوريغون و ذلك بإتباع الإرشادات المدرجة أسفل القرار.

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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