

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0717

Modified
Benefits Allowed in Part, Denied in Part

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 April 18, 2021 through May 1, 2021 (weeks 16-21 and 17-21) and therefore was denied benefits for those weeks (decision # 110446). Claimant filed a timely request for hearing. On August 25, 2021, ALJ Janzen conducted a hearing, and on August 26, 2021 issued Order No. 21-UI-173483, affirming decision # 110446. On September 3, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant's argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant's argument to the extent it was based on the record.

FINDINGS OF FACT: (1) On March 18, 2020, claimant filed an initial claim for unemployment insurance benefits. Claimant claimed benefits for the weeks from April 18, 2021 through May 1, 2021 (weeks 16-21 through 17-21), the weeks at issue. Neither of those weeks was the first effective week of claimant's benefit year. The Department did not pay claimant benefits for either week.

(2) On March 30, 2021, claimant attempted to restart her claim online for the week of March 21 through 27, 2021 (week 12-21) after a period of not claiming. The Department's website advised claimant to contact the Department directly to restart her claim. That same day, claimant used the "Contact Us" feature on the Department's online claim system to submit a written request to restart her claim.

(3) On April 26, 2021, claimant attempted to use the Department's online claim system to file a claim for benefits for week 16-21. The system did not allow claimant to file the claim for week 16-21 without restarting her claim. However, the system again would not allow claimant to restart her claim online and again advised her to "contact [the Department] directly" to restart her claim. Transcript at 9. Claimant tried to call the Department, but after waiting on hold for two hours, discontinued the call. Claimant

used the “Contact Us” feature on the Department’s online claim system to submit a written request to restart her claim for weeks 12-21 and 16-21.

(4) On April 29, 2021 and May 4, 2021, claimant made additional attempts to contact the Department by phone, but was unsuccessful.

(5) On May 12, 2021, claimant used the “Contact Us” feature on the Department’s website to submit a new request to restart her claim for weeks 12-21, 16-21 and 17-21.

(6) On May 19, 2021, claimant made contact with a Department representative who assisted claimant with restarting her claim and in processing her claims for benefits for weeks 16-21 and 17-21.

CONCLUSIONS AND REASONS: Claimant filed a timely claim for benefits for week 16-21 and is entitled to benefits for that week. Claimant filed a late claim for benefits for week 17-21 and is not entitled to benefits for that week.

OAR 471-030-0045 (January 11, 2018) 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[.]

* * *

Claimant’s respective claims for benefits for weeks 16-21 and 17-21 were not for the first effective week of her benefit year. Therefore, under OAR 471-030-0045(4), her continued claims for benefits for weeks 16-21 and 17-21 were due by May 1, 2021 and May 8, 2021, respectively.

The record shows that on April 26, 2021, submitted a “Contact Us” request to the Department to restart her claim for weeks 12-21 and 16-21. Given that claimant had already made a “Contact Us” request that the Department restart her claim for week 12-21, her April 26, 2021 “Contact Us” request is reasonably

construed as a second request to restart her claim for week 12-21, and a claim for benefits for week 16-21. And because claimant's claim for week 16-21 was submitted prior to the May 1, 2021 filing deadline for that week, the claim was timely, and claimant is entitled to benefits for week 16-21.

Conversely, although claimant also submitted a May 12, 2021 "Contact Us" request to the Department that is similarly construed, in part, as a claim for benefits for week 17-21, that request was submitted after the timely filing deadline of May 8, 2021. As such, claimant's May 12, 2021 claim for benefits for week 17-21 was late. Because the Department's rules do not contain a "good cause" exception for filing a late continued claim, claimant is not entitled to benefits for week 17-21.

For the above reasons, claimant is entitled to benefits for week 16-21, and is not entitled to benefits for week 17-21.

DECISION: Order No. 21-UI-173483 is modified, as outlined above.

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

DATE of Service: October 12, 2021

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.

NOTE: This decision modifies an order that denied benefits. Please note that payment of benefits, if any are owed, may take approximately a week for the Department to complete.

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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 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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