

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0737

Reversed & Remanded

PROCEDURAL HISTORY: On June 17, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant's request to backdate his claim was denied and he was ineligible to receive unemployment insurance benefits for the weeks from January 10, 2021 through February 6, 2021 (weeks 02-21 through 05-21) (decision # 131040). Claimant filed a timely request for hearing. On August 16, 2021, ALJ Frank conducted a hearing, and on August 24, 2021 issued Order No. 21-UI-173232, affirming decision # 131040. On September 13, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDING OF FACT: (1) On February 8, 2021, claimant attempted to file an initial claim for unemployment insurance benefits, but the claim was rejected because Department records showed no wages in Oregon. Claimant claimed the weeks from January 10, 2021 through February 6, 2021 (weeks 02-21 through 05-21), the weeks at issue. Claimant successfully filed an initial claim for benefits by telephone on June 8, 2021. The Department subsequently decided to treat the initial claim as if it had been filed on February 8, 2021, and found that the first effective week of claimant's initial claim was the week beginning February 7, 2021 (week 06-21). The Department did not pay benefits for any of the weeks at issue.

CONCLUSIONS AND REASONS: Order No. 21-UI-173232 is set aside and this matter remanded for further development of the record.

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

(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[.]

* * *

(e) “Backdating” occurs when an authorized representative of the Employment Department corrects, adjusts, resets or otherwise changes the effective date of an initial, additional or reopened claim to reflect filing in a prior week. Backdating may occur based upon evidence of the individual's documented contact on the prior date with the Employment Department or with any other state Workforce agency, or as otherwise provided in this rule.

(2) For the purposes of filing an initial . . . claim:

* * *

(e) When filed by telephone, the date of filing shall be the date recorded in the completed telephone initial claim record of the agency system or by an employee completing the filing of the claim record.

* * *

(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. An authorized representative of the Employment Department will backdate an additional or reopened claim to the calendar week immediately preceding the week in which the request to backdate was made when a claimant requests backdating of the additional or reopened claim.

* * *

The order under review found that claimant filed an initial claim for benefits in June 2021, but that the Department determined the first effective week of the claim would be the week beginning February 7, 2021, when claimant made a “previous, unsuccessful” attempt to file an initial claim. Order No. 21-UI-173232 at 1. The order concluded that claimant was not entitled to backdate his initial claim to claim weeks prior to the week he filed his initial claim because OAR 471-030-0040(3) provides for backdating additional or reopened claims, but does not provide for backdating initial claims. Order No. 21-UI-173232 at 2. However, the record as a whole does not support this conclusion and must be developed further to determine if claimant is entitled to backdate his initial claim, and if so, to what date.

It is undisputed that the Department treated February 8, 2021, which would correlate with week 06-21, as the filing date for claimant’s initial claim. Pursuant to OAR 471-030-0040(3), claimant’s initial claim was therefore effective on Sunday, February 7, 2021, because it was the Sunday of the calendar week in which claimant filed his initial claim. The plain language of OAR 471-030-0040(3) addresses only the backdating of additional or reopened claims, and does not address the backdating of initial regular claims. That rule notwithstanding, OAR 471-030-0040(1)(e) refers to “backdating” the effective date of an *initial*, additional or reopened claim to reflect filing in a prior week. Furthermore, it is common

knowledge that due to the Department's workload and technical issues during the COVID-19 pandemic, the Department modified some of its procedures temporarily without amending the Oregon administrative rules. The Department's witness testified at hearing that the Department backdated initial claims for a period of time that included "early February [2021]" until March 15, 2021. Audio Record at 9:00 to 9:40. Based on this testimony, the record shows that claimant's initial claim may have been eligible to be backdated.

On remand, it is necessary to obtain information from a Department representative with knowledge of the Department's backdating policy and procedures during the weeks at issue to determine whether the Department was backdating initial claims during these weeks; when the Department began to allow backdating of initial claims; how many weeks the Department was permitted to backdate an initial claim; and whether the backdating was permitted based solely on a claimant's request for backdating, and if not, the eligibility criteria to allow backdating. The record also does not show if the Department required a claimant to request that their claim be backdated, and if so, the procedure and time requirements for making such a request. The record does not show what notice, if any, the Department gave claimant regarding the possibility of backdating his initial claim. Notably, the fact that the Department stopped backdating initial claims on March 15, 2021 would not appear to affect the outcome of this case, because the weeks at issue all fall before that date.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because further development of the record is necessary for a determination of whether the Department should have denied claimant's request to backdate his initial claim and whether claimant was eligible to receive unemployment insurance benefits for the weeks from January 10, 2021 through February 6, 2021 (weeks 02-21 through 05-21), Order No. 21-UI-173232 is reversed, and this matter is remanded.

DECISION: Order No. 21-UI-173232 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: October 20, 2021

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 21-UI-173232 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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 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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