

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0750

Affirmed
Late Claims Denied
Ineligible Weeks 53-20 Through 11-21

PROCEDURAL HISTORY: On April 20, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was denied benefits for the weeks including December 27, 2020 through March 20, 2021 (weeks 53-20 through 11-21) because he made late weekly claims for benefits for those weeks (decision # 112058). Claimant filed a timely request for hearing. On August 11, 2021, ALJ Frank conducted a hearing, and on August 19, 2021 issued Order No. 21-UI-172938, affirming decision # 112058. On September 7, 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 him 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 April 8, 2020, claimant filed an initial claim for regular unemployment insurance (regular UI) benefits. The Department determined claimant had a valid claim for regular UI benefits with a first effective week of April 5, 2020 through April 11, 2020 (week 15-20). Thereafter, claimant made weekly claims for benefits for several weeks in the spring and summer of 2020 and then stopped claiming.

(2) In April 2020, the Department adopted a temporary policy under which the Department would credit claimants for weeks in which they failed to make weekly claims for benefits if they indicated they were unsuccessful in claiming by telephone due to high call volume or were unsuccessful using the Department's online claim system because of technical difficulties.

(3) In late October 2020, claimant resumed making weekly claims for benefits. Using the Department's online system, claimant made weekly claims for benefits for each week of November 2020. On December 7, 2020, claimant used the online claim system to claim the week ending November 28, 2020

(week 48-20). On December 7, 2020, claimant remained on approved status and had a balance remaining. However, when claimant tried to make a weekly claim for benefits for the first week of December 2020 (week 49-20), he believed the online claim system did not allow him to claim. Claimant attempted to call the Department to claim the week by telephone, but was not able to get through to anyone.

(4) On December 8, 2020, claimant received a letter from the Department that advised that claimant may be eligible for Pandemic Unemployment Assistance (PUA). Exhibit 1 at 2. The letter provided instructions for applying for PUA and stated “[a]fter you apply for PUA, keep filing weekly Regular Unemployment Insurance (UI) claims for each week you want benefits. Later, if you are found to be eligible for PUA, we will work with you to move your weekly claims to the PUA program.” Exhibit 1 at 2.

(5) After receiving the Department’s December 8, 2020 letter, claimant tried to make a weekly claim for benefits for the second week of December 2020 (week 50-20). When claimant did so, he believed the online claim system again did not allow him to claim but indicated that he “need[ed] to do a new claim,” which claimant interpreted as a suggestion to file an initial claim for PUA. Audio Record at 12:34.

(6) Shortly thereafter, claimant filed an initial claim for PUA benefits and then tried to make a weekly claim for benefits under his PUA claim for the second week of December 2020 using the online system. However, the online system did not allow claimant to make the weekly claim for PUA benefits because his initial claim for PUA had not yet been processed. Claimant attempted to call the Department to claim that week of PUA benefits by telephone, but was not able to get through to anyone. Claimant tried calling on several more occasions during early December 2020, without success.

(7) Because claimant thought he needed to make weekly claims for benefits under his PUA claim, he stopped trying to claim weekly benefits under his regular UI claim using the online system. He also did not try to call the Department to make claims for weekly benefits under his regular UI claim by telephone. As a result, for each of the weeks including December 27, 2020 through March 20, 2021 (weeks 53-20 through 11-21), claimant failed to make weekly claims for regular UI benefits. These are the weeks at issue.

(8) On March 15, 2021, the Department rescinded its temporary policy under which it would credit claimants for weeks in which they failed to make weekly claims for benefits and resumed applying its normal policy. Under the Department’s normal policy, a weekly claim for benefits must be filed no later than seven days following the end of the week for which benefits are claimed.

(9) On March 31, 2021, claimant called the Department and got through to a Department representative. Claimant requested the Department representative take his weekly claims for regular UI benefits that he had failed to make for each of the weeks at issue. The representative did so. However, the Department considered the weekly claims for regular UI benefits to be late and did not pay claimant benefits for any of the weeks at issue.

CONCLUSIONS AND REASONS: Claimant filed late claims for regular UI benefits for the weeks including December 27, 2020 through March 20, 2021 (weeks 53-20 through 11-21) 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. 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). The Director may, with respect to individual claimants or groups of claimants, direct that weekly claims for benefits be filed on any reporting schedule appropriate to existing facilities and conditions. OAR 471-030-0045(5). 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).

The record shows claimant did not file his weekly claims for regular UI benefits for any of the weeks at issue within seven days following the end of each respective week for which benefits were claimed. As such, claimant did not comply with OAR 471-030-0045(4), and therefore was denied benefits for the weeks at issue due to having made his claims late.

OAR 471-030-0045(4) contains no good cause exception for filing claims late. Claimant failed to make timely weekly claims for regular UI benefits because in early December 2020, before any of the weeks at issue, he had difficulty with the online claim system and could not get through to the Department by telephone. It is not evident from the record that the technical difficulties he experienced with the online system would have persisted during the weeks at issue given that the record shows that after December 7, 2020, claimant remained on approved status and had a balance remaining on his regular UI claim. Moreover, had claimant continued attempting to call the Department and reached a representative at any point during the weeks at issue prior to March 15, 2021, he would have received the benefit of the Department's temporary policy and his late claims would have been treated as timely.

Claimant also failed to make timely weekly claims for regular UI benefits because he thought he needed to make weekly claims for benefits under his PUA claim, not his regular UI claim. Claimant concluded that he needed to claim under his PUA claim because the online system did not allow him to make a weekly claim for regular UI benefits for the second week of December 2020 (which was before the weeks at issue), and claimant believed the system informed him that he "need[ed] to do a new claim." Audio Record at 12:34. That message coupled with the Department's December 8, 2020 letter that advised that claimant may be eligible for PUA, led claimant to believe that he was to pursue a PUA claim and was no longer required to make weekly claims for benefits under his regular UI claim. It was unreasonable for claimant to assume he no longer needed to make weekly claims for benefits under his regular UI claim based on the December 8, 2020 letter because that letter explicitly stated "[a]fter you apply for PUA, keep filing weekly Regular Unemployment Insurance (UI) claims for each week you want benefits." Exhibit 1 at 2.

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

DECISION: Order No. 21-UI-172938 is affirmed.

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

DATE of Service: October 13, 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.

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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 ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄໍາຕັດສິນນີ້.

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 الاستئناف 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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