

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0872

Order No. 21-UI-176410 ~ Affirmed ~ Request to Backdate Initial Claim Denied
Order No. 21-UI-176411 ~ Reversed ~ Eligible Weeks 23-21 through 27-21

PROCEDURAL HISTORY: On August 18, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant's request to backdate her claim was denied and she was ineligible to receive unemployment insurance benefits for the weeks from January 10, 2021 through April 10, 2021 (weeks 02-21 through 14-21) (decision # 71855). Also on August 18, 2021, the Department served notice of an administrative decision concluding that claimant filed late claims for unemployment insurance benefits for weeks including June 6, 2021 through July 10, 2021 (weeks 23-21 through 27-21) and therefore was ineligible for benefits for those weeks (decision # 72347). Claimant filed timely requests for hearing on decisions # 71855 and 72347. On October 4, 2021, ALJ Scott conducted a hearing interpreted in Japanese on both decisions. On October 5, 2021, ALJ Scott issued Order No. 21-UI-176410 affirming decision # 71855, and Order No. 21-UI-176411 affirming decision # 72347. On October 25, 2021, claimant filed applications for review of Orders No. 21-UI-176410 and 21-UI-176411 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 21-UI-176410 and 21-UI-176411. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2021-EAB-0872 and 2021-EAB-0873).

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.

Based on a *de novo* review of the entire consolidated record in these cases, and pursuant to ORS 657.275(2), Order No. 21-UI-176410, affirming decision # 71855 is **adopted**. The remainder of these consolidated decisions addresses whether, as concluded in Order No. 21-UI-176411, claimant filed late claims for unemployment insurance benefits for weeks 23-21 through 27-21.

FINDINGS OF FACT: (1) On April 24, 2021, claimant filed an initial claim for unemployment insurance benefits.

(2) On June 1, 2021, claimant attempted to use the Department's online claim system to file a claim for benefits for the week of May 23, 2021 through May 29, 2021 (week 21-21). The system did not allow claimant to file the claim for week 21-21 without restarting the claim. However, the system would not allow claimant to restart her claim online, and advised her to submit a "Contact Us" form to the Department to request assistance. Claimant submitted the "Contact Us" form and also called the Department and spoke to a representative. The representative told claimant they would try to restart the claim and to check back online at a later time.

(3) On June 3, 2021, the Department responded to claimant's "Contact Us" form by asking claimant to provide certain information related to her request. Claimant supplied the requested information and the Department considered her claim for benefits for week 21-21 to be timely.

(4) On or about June 10, 2021, claimant attempted to use the Department's online claim system to file a claim for benefits for the week of May 30, 2021 through June 5, 2021 (week 22-21). The system did not allow claimant to file the claim for week 22-21 without restarting the claim. However, the system would not allow claimant to restart her claim online, and advised her to submit a "Contact Us" form to the Department to request assistance. Claimant submitted the "Contact Us" form and the Department responded by asking claimant to provide certain information related to her request. Claimant supplied the requested information and the Department considered her claim for benefits for week 22-21 to be timely.

(5) From June 6, 2021 through July 16, 2021, claimant attempted to use the Department's online claim system to file weekly claims for benefits within seven days following the end of the week for which she was claiming benefits. With respect to each online attempt to file her weekly claim for benefits for the weeks including June 6, 2021 through July 10, 2021 (weeks 23-21 through 27-21), claimant was unsuccessful in filing her weekly claim with the claims system "Claim Filing Log" reflecting that claimant "Needs Assistance." Exhibit 1 at 15. In one instance, on July 16, 2021, claimant was logged into the online claim system for 29 minutes and seven seconds but was unsuccessful in her attempt to claim for benefits for week 27-21.

(6) On July 30, 2021, claimant successfully claimed benefits online for weeks 23-21 through 27-21, the weeks at issue. None of these weeks was the first effective week of claimant's benefit year. The Department paid claimant benefits for each of the weeks at issue.

CONCLUSIONS AND REASONS: Claimant is entitled to benefits for weeks 23-21 through 27-21.

Where the Department has paid benefits it has the burden to prove benefits should not have been paid. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

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 non-compensable 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[.]

* * *

None of the weeks at issue were the first effective week of claimant’s benefit year. Therefore, under OAR 471-030-0045(4), her continued claims for benefits for weeks 23-21, 24-21, 25-21, 26-21, and 27-21 were due by June 19, 2021, June 26, 2021, July 3, 2021, July 10, 2021, and July 17, 2021, respectively.

The record shows that after successfully restarting her claim and filing a timely claim for benefits for both weeks 21-21 and 22-21, claimant continued to use the online claim system to attempt to file weekly claims for benefits, albeit unsuccessfully, within seven days following the end of weeks 23-21 through 27-21, respectively. On July 30, 2021, claimant successfully claimed benefits for the weeks at issue and the Department paid claimant benefits for each of those weeks. Although the Department’s representative testified that claimant did not file a timely, weekly claim for any of the weeks at issue, the Department did not meet its burden to show that benefits should not have been paid during these weeks given claimant’s testimony that she had continued to attempt to make timely claims for benefits for each of the week at issue, given the support provided to her testimony by the “Claim Filing Log” indicating that she had attempted to make timely weekly claims and “Need[ed] Assistance,” and given the Department’s decision to ultimately pay her benefits for the weeks at issue. Transcript at 11, 15. Accordingly, claimant made timely claims for benefits for weeks 23-21 through 27-21 and is entitled to benefits for these weeks.

DECISION: Order No. 21-UI-176410 is affirmed. Order No. 21-UI-176411 is set aside, as outlined above.

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

DATE of Service: November 30, 2021

NOTE: This decision reverses 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.

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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