

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0955

Affirmed
Late Claims for Benefits Denied
Ineligible Weeks 36-21 through 37-21

PROCEDURAL HISTORY: On October 7, 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 September 5, 2021 through September 18, 2021 (weeks 36-21 through 37-21) and was denied benefits for those weeks (decision # 90026). Claimant filed a timely request for hearing. On November 1, 2021, ALJ Davis conducted a hearing and issued Order No. 21-UI-178593, affirming decision # 90026. On November 12, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On May 26, 2021, claimant filed an initial claim for unemployment insurance benefits. The Department determined claimant had a valid claim for benefits with a first effective week of May 23, 2021 through May 29, 2021 (week 21-21).

(2) On two occasions between September 12, 2021 and September 18, 2021, claimant attempted to claim benefits for the week of September 5, 2021 through September 11, 2021 (week 36-21) by using his cell phone to access the Department's online claims system. When he tried to do so, the online system would not allow him to log in with his cell phone. Claimant then tried calling the Department to claim week 36-21 but was on hold for several hours and unable to reach a representative.

(3) On one occasion between September 19, 2021 and September 25, 2021, claimant attempted to claim benefits for the week of September 12, 2021 through September 18, 2021 (week 37-21) by using his cell phone to access the Department's online system. When he tried to do so, the online system again would not allow him to log in with his cell phone. Claimant then tried calling the Department to claim week 37-21 but was unable to reach a representative.

(4) Claimant did not try claiming benefits for weeks 36-21 or 37-21 by logging in to the Department's system with a device other than his cell phone. Claimant also did not try claiming benefits for weeks 36-21 or 37-21 by United States mail or by fax.

(5) On September 28, 2021, claimant called the Department and reached a representative. With the representative's assistance, claimant claimed benefits for weeks 36-21 and 37-21, the weeks at issue. The Department did not pay claimant benefits for the weeks at issue.

CONCLUSIONS AND REASONS: Claimant filed late claims for benefits for the weeks including September 5, 2021 through September 18, 2021 (weeks 36-21 through 37-21) 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 471-030-0045 (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[.]

* * *

A continued claim may be filed in person at any Employment Department office in the state of Oregon, by United States mail, by fax, by internet, or by telephone. OAR 471-030-0045(3)(a)-(e). 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).

Claimant filed continued claims for weeks 36-21 and 37-21. Neither of the weeks at issue was the first effective week of claimant's benefit year. Therefore, under OAR 471-030-0045(4), claimant had to file his continued claim for benefits for week 36-21 between September 12, 2021 and September 18, 2021. Claimant had to file his continued claim for benefits for week 37-21 between September 19, 2021 and September 25, 2021. Claimant did not file a claim for either of the weeks at issue by the timely filing

deadline for each week; rather, claimant claimed both of the weeks on September 28, 2021, after the seven-day deadline for each respective week had passed.

The record shows that claimant made attempts to claim each week at points in time that would have constituted timely continued claims, but that when claimant made those attempts to claim either the Department's online system would not allow him to log in with his cell phone or he was unable to reach a Department representative to claim by telephone. Nevertheless, OAR 471-030-0045(4) contains no good-cause exception for failing to file a timely continued claim. Moreover, the record shows that claimant did not attempt to claim the weeks at issue by logging in to the Department's system with a device other than his cell phone. Nor did Claimant try claiming benefits via alternative methods such as by United States mail or by fax. Because claimant filed late claims for the weeks at issue, claimant is not entitled to benefits for weeks 36-21 through 37-21.

DECISION: Order No. 21-UI-178593 is affirmed.

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

DATE of Service: December 17, 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 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 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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