

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0970

Affirmed
Late Claims for Benefits Denied
Weeks 03-21 through 24-21 and 28-21 through 35-21

PROCEDURAL HISTORY: On September 24, 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 January 3, 2021 through June 19, 2021 (weeks 01-21 through 24-21) and July 11, 2021 through September 4, 2021 (weeks 28-21 through 35-21) and was therefore denied benefits for those weeks (decision # 101134). Claimant filed a timely request for hearing. On October 25, 2021, ALJ Frank conducted a hearing, and on October 27, 2021 issued Order No. 21-UI-178252, modifying decision # 101134 by concluding that claimant was not entitled to benefits for the weeks from January 17, 2021 through June 19, 2021 (weeks 03-21 through 24-21) and July 11, 2021 through September 4, 2021 (weeks 28-21 through 35-21) because claimant filed late claims for those weeks. On November 15, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On September 9, 2020, claimant filed an initial claim for unemployment insurance benefits.

(2) Between January 24, 2021 and January 30, 2021, claimant attempted to use the Department's online claim system to file a timely claim for benefits for the week of January 17, 2021 through January 23, 2021 (week 03-21). The system did not allow claimant to file the claim for week 03-21 without restarting the claim. Claimant neither completed the restart process, nor filed a completed weekly claim for benefits for week 03-21.

(3) Between February 7, 2021 and February 13, 2021, claimant attempted to use the Department's online claim system to file a timely claim for benefits for the week of January 31, 2021 through February 6, 2021 (week 05-21). The system did not allow claimant to file the claim for week 05-21 without restarting the claim. Claimant neither completed the restart process, nor filed a completed weekly claim for benefits for week 05-21.

(4) On February 3, 2021, August 2, 2021, August 3, 2021, and August 6, 2021, claimant called the Department and spoke to a representative but did not attempt to claim benefits during any of those conversations.

(5) On September 16, 2021, claimant claimed benefits for the weeks from January 17, 2021 through June 19, 2021 (weeks 03-21 through 24-21) and July 11, 2021 through September 4, 2021 (weeks 28-21 through 35-21), the weeks at issue. The Department did not pay claimant benefits for any of those weeks.

CONCLUSIONS AND REASONS: Claimant filed late claims for benefits for weeks 03-21 through 24-21 and weeks 28-21 through 35-21 and is not entitled to receive benefits for those weeks.

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).

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[.]

* * *

The record does not indicate what the first effective week of claimant’s benefit year was. In the absence of that information, however, it is reasonable to conclude from the September 9, 2020 filing date of her initial claim that none of the weeks at issue was the first effective week of claimant’s benefit year. Therefore, under OAR 471-030-0045(4), claimant’s continued claims for benefits for weeks 10-21, 11-21, 12-21, 13-21, 14-21, and 15-21 were due by March 20, March 27, April 3, April 10, April 17, and April 24, 2021, respectively. Claimant’s continued claims for benefits for weeks 16-21, 17-21, 18-21, 19-21, and 20-21, were due by May 1, May 8, May 15, May 22, and May 29, 2021, respectively.

Claimant's continued claims for benefits for weeks 21-21, 22-21, 23-21, and 24-21, were due by June 5, June 12, June 19, and June 26, 2021, respectively. Claimant's continued claims for benefits for weeks 28-21, 29-21, 30-21, and 31-21, were due by July 24, July 31, August 7, and August 14, 2021, respectively. Claimant's continued claims for benefits for weeks 32-21, 33-21, 34-21, and 35-21, were due by August 21, August 28, September 4, and September 11, 2021, respectively.

Pursuant to OAR 471-030-0045(4), claimant's continued claims for benefits for weeks 03-21 through 09-21 would also normally be due no later than seven days following the end of the week for which benefits are claimed. However, pursuant to a temporary policy enacted by the Department, claimant was eligible to have any late claim for benefits for any of those weeks backdated, such that the Department would consider the claim timely, as long as the late claim was made by March 15, 2021. Audio Record at 09:38 to 10:40.¹ Because claimant did not file continued claims for any of the weeks at issue until six months later, on September 16, 2021, the claims were not timely under OAR 471-030-0045(4) or the Department's temporary policy.

While the record shows that claimant made, at the very least, an effort to file a claim for weeks 03-21 and 05-21 by the timely filing deadline, she failed to complete the process to restart her claim or complete a weekly claim for benefits for either week. Because claimant filed late claims for all of the weeks at issue, claimant is not entitled to receive benefits for those weeks.

DECISION: Order No. 21-UI-178252 is affirmed.

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

DATE of Service: December 22, 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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¹ The Department rescinded this temporary policy on March 15, 2021. Audio Record at 9:44.



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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