

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0972

Order No. 21-UI-178680 ~ Affirmed ~ Ineligible Weeks 11-21 through 19-21
Order No. 21-UI-178695 ~ Affirmed ~ Ineligible Weeks 21-21 through 34-21

PROCEDURAL HISTORY: On September 23, 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 including May 23, 2021 through August 28, 2021 (weeks 21-21 through 34-21) and therefore was ineligible for benefits for those weeks (decision # 65141). On September 24, 2021, the Department served notice of an administrative decision concluding that claimant filed late claims for unemployment insurance benefits for the weeks including March 14, 2021 through May 15, 2021 (weeks 11-21 through 19-21) and was therefore denied benefits for those weeks (decision # 64717). Claimant filed timely requests for hearing on decisions # 65141 and 64717. On November 1, 2021, ALJ Roberts conducted a consolidated hearing on decisions # 65141 and 64717, and on November 2, 2021, issued Orders No. 21-UI-178680 and 21-UI-178695, affirming decisions # 64717 and 65141, respectively. On November 18, 2021, claimant filed applications for review of Orders No. 21-UI-178680 and 21-UI-178695 with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant submitted written argument on November 18, 2021 and December 11, 2021. Both of 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 arguments to the extent they were based on the record.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 21-UI-178680 and 21-UI-178695. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2021-EAB-0972 and 2021-EAB-0973).

FINDINGS OF FACT: (1) On January 2, 2019, claimant filed an initial claim for unemployment insurance benefits with a first effective week of December 30, 2018 through January 5, 2019 (week 01-19).

(2) On December 6, 2020, claimant attempted to use the Department's online claim system to file a claim for benefits. The system did not allow claimant to file the claim without restarting his claim. However, the system would not allow claimant to restart his claim online, and advised him to contact the Department by telephone to request assistance.

(3) From December 2020 through August 2021, claimant attempted to call the department "every day, multiple times a day" to obtain assistance with restarting his claim. Transcript at 29-30. During one attempt, claimant spent over seven hours on hold before "the system just hung up on [claimant]." Transcript at 29. During this period of time, claimant was unaware of the "Contact Us" feature on the Department's website, which was an alternate means of requesting assistance from the Department.

(4) In August 2021, claimant contacted his State representative about his claim. Claimant's State representative reached out to the Department to request that a representative from the Department contact claimant.

(5) On September 10, 2021, a representative from the Department contacted claimant by phone and assisted him with claiming benefits for the weeks including March 14, 2021 through May 15, 2021 (weeks 11-21 through 19-21) and May 23, 2021 through August 28, 2021 (weeks 21-21 through 34-21). These are 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 11-21 through 19-21 and weeks 21-21 through 34-21 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[.]

* * *

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 11-21, 12-21, 13-21, 14-21, and 15-21 were due by 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, and 19-21 were due by May 1, May 8, May 15, and May 22, 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 25-21, 26-21, 27-21, 28-21, and 29-21, were due by July 3, July 10, July 17, July 24, and July 31, 2021, respectively. Claimant's continued claims for benefits for weeks 30-21, 31-21, 32-21, 33-21, and 34-21, were due by August 7, August 14, August 21, August 28, and September 4, 2021, respectively. Because claimant did not file continued claims for any of the weeks at issue until September 10, 2021, the claims were late.

The record shows that claimant made multiple calls, daily, in an effort to file weekly claims for benefits for the weeks at issue, but that he was prevented from doing so by an inability to get through on the Department's telephone lines. However, OAR 471-030-0045(4) contains no good-cause exception for failing to file a timely continued claim. Therefore, because he filed late claims for the weeks at issue, claimant is not entitled to benefits for those weeks.

DECISION: Orders No. 21-UI-178680 and 21-UI-178695 are affirmed.

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

DATE of Service: December 27, 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 ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

Arabic

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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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