

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0991

Order No. 21-UI-180205 ~ Affirmed ~ Ineligible Weeks 07-21 through 21-21
Order No. 21-UI-180204 ~ Affirmed ~ Ineligible Weeks 22-21 through 30-21

PROCEDURAL HISTORY: On August 4, 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 February 14, 2021 through May 29, 2021 (weeks 07-21 through 21-21) and therefore was ineligible for benefits for those weeks (decision # 123457). Claimant filed a timely request for hearing on decision # 123457. On September 8, 2021, the Department served notice of an administrative decision concluding that claimant filed late claims for benefits for the weeks including May 30, 2021 through July 31, 2021 (weeks 22-21 through 30-21) and was therefore denied benefits for those weeks (decision # 80848). Claimant filed a timely request for hearing on decision # 80848. On November 15, 2021, ALJ Wardlow conducted a consolidated hearing on decisions # 123457 and 80848, and on November 19, 2021, issued Orders No. 21-UI-180205 and 21-UI-180204, affirming decisions # 123457 and 80848, respectively. On November 23, 2021, claimant filed applications for review of Orders No. 21-UI-180205 and 21-UI-180204 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 21-UI-180205 and 21-UI-180204. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2021-EAB-0991 and 2021-EAB-0992).

FINDINGS OF FACT: (1) On January 20, 2021, claimant filed an initial claim for unemployment insurance (UI) benefits with a first effective week of January 10, 2021 through January 16, 2021 (week 02-21).

(2) On February 14, 2021, claimant made a timely claim for benefits for the week of February 7, 2021 through February 13, 2021 (week 06-21).

(3) In late February 2021, claimant relocated to California. At the time of her move, claimant reviewed online the Department's claimant handbook. The handbook instructed claimants that weekly claims for benefits must be filed within seven days following the end of the week for which benefits are claimed. Claimant mistakenly understood the handbook as instructing her, as an individual who had moved out of

state, to seek UI benefits through the State of California and to discontinue seeking UI benefits in Oregon. Claimant did not attempt to contact the Department to confirm her understanding. Claimant also began the process of seeking UI benefits in the State of California and stopped filing weekly claims for benefits in Oregon.

(4) On June 7, 2021, claimant started work in California.

(5) On July 22, 2021, the State of California mailed a letter to claimant informing her that she was not eligible for UI benefits in California and that she needed to seek UI benefits in Oregon. Claimant also made contact with the Department using the “Contact Us” feature on the Department’s online claims system in an attempt to claim benefits for the weeks including February 14, 2021 (week 07-21) through the date of her contact with the Department.

(6) On July 28, 2021, the Department informed claimant that she had a valid Oregon claim for UI benefits, but that she needed to restart her claim, and that the Department could not restart her claim until claimant provided additional information.

(7) On July 29, 2021, after claimant provided the necessary information, the Department restarted her UI claim effective the week of July 18, 2021 through July 24, 2021 (week 29-21). The Department advised claimant she had until Saturday, July 31, 2021 to make a timely claim for benefits for week 29-21, and that beginning Sunday, August 1, 2021 she could “resume regular claiming.” Transcript at 10.

(8) On August 3, 2021, claimant contacted the Department in order to claim benefits for the weeks including February 14, 2021 through July 30, 2021 (weeks 07-21 through 30-21), the weeks at issue. Because of issues related to the new job she started on June 7, 2021 in California, the Department’s representative was only able to assist claimant in claiming benefits for the weeks including February 14, 2021 through May 29, 2021 (weeks 07-21 through 21-21). The Department did not pay claimant benefits for weeks 07-21 through 21-21.

(9) Between August 4, 2021 and September 1, 2021, claimant was unable to file claims for benefits for the weeks of May 30, 2021 through July 31, 2021 because she had trouble making the claims.

(10) On September 1, 2021, a representative from the Department assisted claimant with claiming benefits for the weeks including May 30, 2021 through July 31, 2021 (weeks 22-21 through 30-21). The Department did not pay claimant benefits for weeks 22-21 through 30-21.

CONCLUSIONS AND REASONS: Claimant filed late claims for benefits for weeks 07-21 through 30-21 and is not entitled to 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 07-21, 08-21, 09-21, 10-21, and 11-21 were due by February 27, March 6, March 13, March 20, and March 27, 2021, respectively. Claimant’s continued claims for benefits for weeks 12-21, 13-21, 14-21, 15-21, and 16-21 were due by April 3, April 10, April 17, April 24, and May 1, 2021, respectively. Claimant’s continued claims for benefits for weeks 17-21, 18-21, 19-21, 20-21, and 21-21 were due by May 8, May 15, May 22, May 29, and June 5, 2021, respectively. Because claimant did not file continued claims for any of these weeks until August 3, 2021, the claims were late.

Claimant’s continued claims for benefits for weeks 22-21, 23-21, 24-21, and 25-21, were due by June 12, June 19, June 26, and July 3, 2021, respectively. Claimant’s continued claims for benefits for weeks 26-21, 27-21, 28-21, 29-21, and 30-21, were due by July 10, July 17, July 24, July 31, and August 7, 2021, respectively. Because claimant did not file continued claims for any of these weeks until September 1, 2021, the claims were late.

The record shows that claimant had access to the Department’s claimant handbook which included instructions for claimants on how to timely file weekly claims for benefits; and that, prior to the weeks at issue, claimant had previously timely filed at least one weekly claim. Despite this, the record suggests that claimant’s failure to file timely weekly claims during the weeks at issue may have been the result of her own misunderstanding about where to file after she moved to California. However, OAR 471-030-0045(4) contains no good-cause exception for failing to file a timely continued claim. Similarly, while the record suggests that the Department may have had a legitimate basis for limiting the processing of claimant’s claims for benefits on August 3, 2021 to weeks 07-21 through 21-21, even if this had not been the case and the Department should have processed claims for all of the weeks at issue¹, the lack of

¹ Theoretically, if the claimant adequately filed and the Department had processed claimant’s claims for benefits on August 3, 2021 for all of the weeks at issue, claimant could have been entitled to receive benefits for week 30-21 because an August 3, 2021 claim for benefits would have been timely as to that week.

a good-cause exception in OAR 471-030-0045(4) would still require a denial of benefits for the continued claims that claimant filed late. Thus, because claimant filed late claims for benefits for the weeks at issue, claimant was not eligible to benefits for the weeks at issue.

DECISION: Orders No. 21-UI-180205 and 21-UI-180204 are affirmed.

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

DATE of Service: December 30, 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 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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