

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0028

Affirmed
Late Claims for Benefits Denied
Ineligible Weeks 19-20 through 53-20

PROCEDURAL HISTORY: On October 20, 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 3, 2020 through June 27, 2020 (weeks 19-20 through 26-20) and therefore was ineligible to receive benefits for those weeks (decision # 144553). Also on October 20, 2021, the Department served notice of an administrative decision concluding that claimant filed late claims for benefits for the weeks including June 28, 2020 through August 22, 2020 (weeks 27-20 through 34-20) and therefore was ineligible to receive benefits for those weeks (decision # 144930). Also on October 20, 2021, the Department served notice of an administrative decision concluding that claimant filed late claims for benefits for the weeks including August 23, 2020 through October 17, 2020 (weeks 35-20 through 42-20) and therefore was ineligible to receive benefits for those weeks (decision # 145201). Also on October 20, 2021, the Department served notice of an administrative decision concluding that claimant filed late claims for benefits for the weeks including October 18, 2020 through December 12, 2020 (weeks 43-20 through 50-20) and therefore was ineligible to receive benefits for those weeks (decision # 145429). Also on October 20, 2021, the Department served notice of an administrative decision concluding that claimant filed late claims for benefits for the weeks including December 13, 2020 through January 2, 2021 (weeks 51-20 through 53-20) and therefore was ineligible to receive benefits for those weeks (decision # 145950). Finally, also on October 20, 2021, the Department served notice of an administrative decision concluding that claimant filed late claims for benefits for the weeks including May 3, 2020 through June 13, 2020 (weeks 19-20 through 24-20), and was ineligible to receive benefits for those weeks (decision # 150539).¹

Claimant filed timely requests for hearing on the six administrative decisions. On December 8, 2021, ALJ Roberts conducted a consolidated hearing on the six administrative decisions. On December 9, 2021 ALJ Roberts issued Order No. 21-UI-181452, affirming decision # 145201; Order No. 21-UI-181453, affirming decision # 144553; Order No. 21-UI-181454, affirming decision # 144930; Order No.

¹ Decision # 150539 pertained to a period of weeks included in the weeks at issue in decision # 144553. The Department issued the partially duplicative administrative decisions due to a keying error. Transcript at 8-9.

21-UI-181455, affirming decision # 150539; Order No. 21-UI-181456, affirming decision # 145950; and Order No. 21-UI-181457, affirming decision # 145429. On December 28, 2021, claimant filed applications for review with the Employment Appeals Board (EAB) for Orders No. 21-UI-181452, 21-UI-181453, 21-UI-181454, 21-UI-181455, 21-UI-181456, and 21-UI-181457.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 21-UI-181452, 21-UI-181453, 21-UI-181454, 21-UI-181455, 21-UI-181456, and 21-UI-181457. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2022-EAB-0031, 2022-EAB-0030, 2022-EAB-0029, 2022-EAB-0028, 2022-EAB-0027, and 2022-EAB-0026).

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. In some respects, claimant's argument also contradicted evidence in the record. For example, claimant stated in the argument that the Department's website contained a statement that "backdating was available for claimants who filed for PUA on or before December 27, 2020, which I did." Written Argument at 1. This is contrary to claimant's testimony at hearing, in which she testified that she filed her initial claim for PUA on December 29, 2020. Transcript at 20-21. It is also extraneous to the record, because the only evidence of a statement on the Department's website elicited at hearing related to a website post advising that the Department's backdating policy ended on March 16, 2021. Transcript at 29. In another example, claimant stated in the argument that the Department's backdating policy was misrepresented to her on May 17, 2021 because the Department representative did not inform claimant that the backdating policy had ended. Written Argument at 1. At hearing, claimant did not characterize her interaction with the Department representative on May 17, 2021 as involving misrepresentation. Rather, claimant testified that on May 17, 2021, the Department representative did not mention that the backdating policy had ended, but stated that once claimant's claim cancellation was finalized she would need to "call in and ask for a late report to be added by an adjudicator." Transcript at 35. 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.

FINDINGS OF FACT: (1) On December 29, 2021, claimant filed an initial claim for Pandemic Unemployment Assistance (PUA) benefits. The PUA initial claim form claimant filed had a section that allowed claimant to request making retroactive weekly claims for benefits for up to six weeks. Claimant filled out that section to make weekly claims for benefits for the weeks including March 22, 2020 through May 2, 2020 (weeks 13-20 through 18-20).

(2) On January 11, 2021, the Department informed claimant that she was not eligible for PUA benefits because she was eligible for regular unemployment insurance (regular UI) benefits. On January 11, 2021, claimant filed an initial claim for regular UI benefits, which the Department determined was monetarily valid.

(3) After claimant filed her initial claim for regular UI benefits, she was interested in pursuing making claims for benefits for the weeks she was unemployed in 2020. At the time, the Department had a policy in place in which the Department would typically allow claimants to backdate weekly claims for benefits upon request. However, the Department could not backdate claimant's weekly claims for benefits for 2020 without first canceling the claim filed on January 11, 2021 and processing a new

regular UI claim for claimant that would be effective March 22, 2020. The Department's backdating policy was implemented pursuant to the Director of the Department's discretion to direct claimants to file weekly claims for benefits on any reporting schedule appropriate to existing facilities and conditions. There was no good cause exception to the Director's exercise of discretion in this regard.

(4) In late January 2021, claimant spoke to a Department representative regarding making weekly claims for benefits for the weeks she was unemployed in 2020. The representative told claimant that she could cancel her current regular UI claim, have a new regular UI claim processed, and then make weekly claims for benefits for the weeks she was unemployed in 2020. However, the representative stated that the cancellation process could take some time and claimant would not be able to claim weekly benefits from week to week while the cancellation was pending.

(5) The representative did not tell claimant that the backdating policy might no longer be in effect if she waited until later to cancel her claim. However, the representative also did not tell claimant that she would receive payments for the weeks she was unemployed in 2020 if she pursued claiming them at a future date. Claimant decided not to cancel her regular UI claim because she needed benefits at that time and did not want to be unable to claim weekly benefits from week to week while the cancellation was pending.

(6) On March 16, 2021, the Department rescinded the policy it had in place in which it would typically allow claimants to backdate weekly claims for benefits upon request. The Department posted a notification on its website advising that the policy was no longer in effect.

(7) On May 17, 2021, claimant again spoke to a Department representative regarding making weekly claims for benefits for the weeks she was unemployed in 2020. Claimant chose to contact the Department on this date because she believed she could financially withstand being unable to claim weekly benefits from week to week while the cancellation was pending. The representative told claimant that if she wanted to claim the weeks from 2020, she would have to cancel her current regular UI claim, which would take some time. The representative told claimant that once her regular UI claim was canceled, she could then submit weekly claims for benefits for the weeks from 2020, which would be late reports. The representative did not mention that the Department's backdating policy was no longer in effect but did tell claimant that the claims would be late reports that would be adjudicated. Claimant authorized the Department to cancel her existing claim.

(8) On August 24, 2021, the Department completed the process of canceling claimant's existing regular UI claim. On August 26, 2021, the Department processed a new regular UI claim for claimant with a first effective week of March 22, 2020 through March 28, 2020 (week 13-19). The Department treated as timely the weekly claims for benefits claimant had previously made on her PUA initial claim form, the weeks including March 22, 2020 through May 2, 2020 (weeks 13-20 through 18-20), and applied those timely weekly claims for benefits to claimant's new regular UI claim.

(9) On September 1, 2021, claimant contacted the Department and, with a representative's assistance, claimed benefits for the weeks including May 3, 2020 through January 2, 2021 (weeks 19-20 through 53-20). These are the weeks at issue. The Department paid claimant benefits for weeks 19-20 through 24-20. The Department did not pay claimant benefits for the remaining weeks at issue.

CONCLUSIONS AND REASONS: Claimant filed late claims for benefits for the weeks including May 3, 2020 through January 2, 2021 (weeks 19-20 through 53-20) 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[.]

* * *

“The Director may, with respect to individual claimants or groups of claimants, direct that continued claims be filed on any reporting schedule appropriate to existing facilities and conditions.” OAR 471-030-0045(5). The Department paid claimant benefits for weeks 19-20 through 24-20, and therefore bears the burden to establish by a preponderance of the evidence that benefits should not have been paid for those weeks; because the Department did not pay claimant benefits for the remaining weeks at issue, claimant bears the burden to establish by a preponderance of the evidence that benefits should have been paid for those weeks. *See Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

Claimant filed continued claims for weeks 19-20 through 53-20. None of the weeks at issue was the first effective week of claimant’s claim. Therefore, under OAR 471-030-0045(4), to be timely, claimant’s continued claims for benefits for each of the weeks at issue must have been filed within seven days following the end of each respective week. The record shows that claimant filed claims for each of the weeks at issue on September 1, 2021, which was after the seven-day deadline for each respective week.

Prior to March 16, 2021, the Department had a policy in place in which it would typically allow claimants to backdate weekly claims for benefits upon request. In late January 2021, claimant considered making backdated claims for the weeks at issue under this policy. However, the Department informed claimant that it could not do so without first canceling claimant's existing regular UI claim and processing a new claim, which would take time, and claimant would be unable to claim weekly benefits from week to week while the cancelation was pending. Claimant decided not to cancel her claim because she needed benefits at that time and did not want to be unable to claim weekly benefits from week to week while the cancelation was pending. Instead, Claimant authorized the Department to cancel her existing claim on May 17, 2021 and, after a new regular UI claim was processed months later, made weekly claims for the weeks at issue on September 1, 2021—all of which occurred after the Department rescinded its backdating policy. Had claimant authorized the Department to cancel her existing claim and process a new one in January 2021, and had claimant then sought to make backdated claims for the weeks at issue on the new claim before the backdating policy was rescinded, the Department likely would have considered her continued claims for the weeks at issue to be timely. While the timing in this case produces a harsh result, OAR 471-030-0045(4) contains no good-cause exception for failing to file a timely continued claim.

The record does not show that claimant's communications with Department representatives in late January 2021 or May 17, 2021 were such that the Department should be estopped from denying claimant benefits for the weeks at issue. The doctrine of equitable estoppel "requires proof of a false representation, (1) of which the other party was ignorant, (2) made with the knowledge of the facts, (3) made with the intention that it would induce action by the other party, and (4) that induced the other party to act upon it." *Keppinger v. Hanson Crushing, Inc.*, 161 Or App 424, 428, 983 P2d 1084 (1999) (citation omitted). In addition, to establish estoppel against a state agency, a party "must have relied on the agency's representations and the party's reliance must have been reasonable." *State ex rel SOSOC v. Dennis*, 173 Or App 604, 611, 25 P3d 341, *rev den*, 332 Or 448 (2001) (citing *Dept. of Transportation v. Hewett Professional Group*, 321 Or 118, 126, 895 P2d 755 (1995)).

Equitable estoppel does not apply to the Department representative's January 2021 statements. While the representative did not warn claimant that the internal backdating policy may not be in effect if claimant waited until later to cancel her claim, the record does not show that this was a knowing omission because there is no evidence that the representative knew that the Department would rescind their policy on March 16, 2021. Further, to the extent claimant relied on the representative's omission to say that the policy might no longer be in effect in the future, it is not evident from the record that her reliance was detrimental, since claimant's decision to forego cancelation and claim from week to week on her existing claim appears to have better fit her financial needs. Similarly, equitable estoppel does not apply based on the Department representative's May 17, 2021 statements. While the representative on this occasion did not mention that the backdating policy was rescinded, it is not evident from the record that relying on that omission to conclude that the claims would be treated as timely was reasonable, since the representative informed claimant that the weeks at issue would be late reports that would need to be adjudicated.

For these reasons, claimant filed late continued claims for the weeks at issue and is not entitled to benefits for weeks 19-20 through 53-20.

DECISION: Order No. 21-UI-181455 is affirmed.

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

DATE of Service: February 8, 2022

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 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
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