

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0043

Affirmed
Ineligible Weeks 12-21 through 18-21

PROCEDURAL HISTORY: On November 12, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was denied benefits for the weeks from March 21, 2021 through May 8, 2021 (weeks 12-21 through 18-21) because filed late claims for unemployment insurance benefits for those weeks (decision # 133650). Claimant filed a timely request for hearing. On December 16, 2021, ALJ Ramey conducted a hearing, and on December 22, 2021 issued Order No. 21-UI-182431, affirming decision # 133650. On December 28, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant's arguments, dated December 28, 2021 and January 3, 2022, 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. 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.

FINDINGS OF FACT: (1) In March 2021,¹ claimant filed an initial claim for Pandemic Unemployment Assistance (PUA) benefits.² Claimant claimed several weeks of PUA benefits through the week ending March 20, 2021 (week 11-21), which she claimed on March 22, 2021. The Department did not pay claimant PUA benefits for those weeks, but it later determined that claimant was eligible for a regular unemployment insurance (regular UI) claim.

¹ EAB has taken notice of these facts, which are contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). Any party that objects to our taking notice of this information must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the noticed fact will remain in the record.

² See generally Pub. L. 116-136 §2102.

(2) On May 6, 2021, claimant filed an initial claim for regular UI benefits. At that time, the Department backdated her initial claim so that it's effective date was the week ending March 21, 2020 (week 12-20).

(3) On May 12, 2021, the Department transferred the weeks claimant had claimed on her PUA claim—up to week 11-21—to her regular UI claim.³ The Department subsequently paid her regular UI benefits for those weeks.

(4) On May 21, 2021, with the assistance of a Department representative, claimant filed weekly claims for benefits for the weeks from March 21, 2021 through May 8, 2021 (weeks 12-21 through 18-21). These are the weeks at issue. Claimant did not attempt to contact the Department to claim the weeks at issue prior to May 21, 2021.

CONCLUSIONS AND REASONS: Claimant filed late claims for benefits for weeks 12-21 through 18-21 and is not entitled to benefits for those weeks.

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 first effective week of claimant’s regular UI claim was the week ending March 21, 2020 (week 12-20). Because none of the weeks at issue were the first effective week of the regular UI claim, claimant must have filed continued claims for each of the weeks at issue no later than seven days following the end of each respective week. For example, claimant must have filed a continued claim for the week of

³ EAB has taken notice of this fact, which is contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). Any party that objects to our taking notice of this information must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the noticed fact will remain in the record.

May 2, 2021 through May 8, 2021 (week 18-21), the last of the weeks at issue, no later than May 15, 2021. Claimant did not file⁴ continued claims for any of the weeks at issue until May 21, 2021. Therefore, all of the weeks at issue were claimed late. OAR 471-030-0045 contains no exceptions for filing a late continued claim for benefits.

In her written argument dated December 28, 2021, claimant stated that her “. . . records show that all weekly claims were submitted for weeks starting in Feb. of 2020 were received on May 12, 2021 and the weeks denied were submitted on 5/12/21 – this was from 3/27/21 to 5/8/21.” Claimant’s December 28, 2021 Written Argument at 3. In the same statement, claimant also explained that:

While waiting to hear if I was able to receive payments and under which fund, all weeks up until May 15, 2021 were put in by worker assisting with my case. I was told that I need to do nothing because the weeks filed had been switched.

Claimant’s December 28, 2021 Written Argument at 3. It is not clear from this statement when claimant had this conversation with the Department representative, or whether the “May 15, 2021” date is accurate. However, her statement that she had been told that “the weeks filed had been switched” suggests that she was referring to the previous weeks—up until week 11-21—that she had claimed under the PUA claim on or prior to March 22, 2021. If so, claimant may have understood the Department representative’s advice that she “need[ed] to do nothing” to mean that she did not have to file claims for weeks *after* week 11-21, rather than to mean that she did not have to take any further steps to be paid for the previously-claimed weeks *up to* 11-21. While such a misunderstanding is unfortunate, claimant has not asserted that she failed to timely claim the weeks at issue because she was advised not to, and the record does not otherwise support a finding that she was given such advice. Absent such a finding, there is no other exception to the requirement that a continued weekly claim for benefits must be filed no later than seven days following the end of the week for which benefits are claimed.

Claimant filed late claims for benefits for the weeks from March 21, 2021 through May 8, 2021 (weeks 12-21 through 18-21), and therefore is ineligible for benefits for those weeks.

DECISION: Order No. 21-UI-182431 is affirmed.

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

DATE of Service: February 7, 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,

⁴ Claimant asserted in her December 28, 2021 written argument that she did not personally file continued claims for the weeks at issue, as they were “put in by [a] worker assisting with [her] case” while she spoke to them on the phone. Claimant’s December 28, 2021 Written Argument at 3. For purposes of this decision, however, no material distinction exists between a continued claim filed by a Department representative at claimant’s request and a continued claim filed solely by claimant. Any references in this decision to claimant having filed continued claims for benefits implicitly acknowledge that they may have been filed at claimant’s request by a Department representative.

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
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