

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0262

Affirmed
Ineligible Weeks 28-21 through 35-21

PROCEDURAL HISTORY: On November 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 including July 11, 2021 through September 4, 2021 (weeks 28-21 through 35-21), and therefore was ineligible to receive benefits for those weeks (decision # 82826). Claimant filed a timely request for hearing. On February 1, 2022, ALJ Amesbury conducted a hearing and issued Order No. 22-UI-185330, affirming decision # 82826. On February 22, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant submitted written arguments on February 22, 2022 and March 21, 2022. Claimant's arguments 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 the summer of 2021, claimant contracted COVID-19 and was unable to work for several weeks. In September 2021, claimant learned that her employer would not compensate her for all of the weeks she could not work. Claimant's employer advised claimant to make an unemployment insurance claim for the weeks she was unable to work. Claimant decided to file a claim for Pandemic Unemployment Assistance (PUA) because, among other reasons, she believed the Department would backdate her weekly claims for benefits for PUA if she filed claims for weeks that occurred before the effective date of her initial claim.

(2) On or about September 24, 2021, claimant attempted to file an initial claim for PUA online but did not complete the online process correctly. On October 8, 2021, claimant called the Department and a representative assisted claimant in filing an initial PUA claim over the phone. During the call, claimant also filed weekly claims for PUA benefits for the weeks including July 11, 2021 through September 4, 2021 (weeks 28-21 through 35-21). The Department subsequently determined that claimant's PUA

claim was not valid because claimant was eligible for regular unemployment insurance (Regular UI) benefits.

(3) On October 26, 2021, claimant called the Department to inquire about the status of her PUA claim and learned that her PUA claim was not valid because claimant was eligible for Regular UI benefits. At claimant's request, the Department converted her initial claim for PUA benefits into an initial claim for Regular UI benefits. The Department treated claimant's initial claim for Regular UI benefits as having been filed on October 8, 2021, the same date that she had filed her initial PUA claim. During the call, claimant claimed Regular UI benefits for weeks 28-21 through 35-21. These are the weeks at issue.

(4) The Department did not pay claimant benefits for the weeks at issue because it determined that the weeks at issue occurred prior to the effective date of her initial claim.

CONCLUSIONS AND REASONS: Claimant is ineligible for benefits for the weeks including July 11, 2021 through September 4, 2021 (weeks 28-21 through 35-21).

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 471-030-0040 (January 11, 2018) provides:

(1) As used in these rules, unless the context requires otherwise:

* * *

(b) An "initial claim" is a new claim that is a certification by a claimant completed as required by OAR 471-030-0025 to establish a benefit year or other eligibility period;

* * *

(e) "Backdating" occurs when an authorized representative of the Employment Department corrects, adjusts, resets or otherwise changes the effective date of an initial, additional or reopened claim to reflect filing in a prior week. Backdating may occur based upon evidence of the individual's documented contact on the prior date with the Employment Department or with any other state Workforce agency, or as otherwise provided in this rule.

* * *

(3) An initial, additional, or reopened claim must be filed prior to or during the first week or series of weeks for which benefits, waiting week credit, or noncompensable credit is claimed and prior to or during the first week of any subsequent series thereafter. An initial claim is effective the Sunday of the calendar week in which it is filed. An authorized

representative of the Employment Department will backdate an additional or reopened claim to the calendar week immediately preceding the week in which the request to backdate was made when a claimant requests backdating of the additional or reopened claim.

* * *

Furthermore, OAR 471-030-0045 (January 11, 2018), provides:

(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, or

* * *

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).

Under OAR 471-030-0040(3), an initial claim for benefits must be filed before the first week or series of weeks for which benefits are claimed. Here, claimant first attempted to file her initial claim for PUA benefits on or about September 24, 2021, and completed the filing of an initial claim for PUA benefits on October 8, 2021, although the Department determined the claim was not valid because claimant was eligible for Regular UI benefits. The record further shows that on October 26, 2021, the Department converted claimant’s initial claim for PUA benefits to an initial claim for Regular UI benefits, and treated the initial claim for Regular UI benefits as having been filed on October 8, 2021. The Department was authorized under OAR 471-030-0040(1)(e) to backdate the effective date of claimant’s initial claim for Regular UI benefits based on documented contact that claimant had with the Department. Assuming that claimant’s attempt to file an initial PUA claim on or about September 24, 2021 amounted to a documented contact with the Department, claimant’s initial claim for Regular UI benefits was eligible to be assigned an

effective date of, at earliest, September 19, 2021, which was the Sunday of the calendar week preceding September 24, 2021. However, regardless of whether the effective date of claimant's initial claim for Regular UI is treated as September 19, 2021 or October 3, 2021 (which is the Sunday of the calendar week preceding October 8, 2021), all of the weeks at issue occurred prior to the beginning of claimant's initial claim for benefits. Therefore, claimant did not file her claims for benefits in accordance with OAR 471-030-0040(3) and is not eligible to receive benefits for the weeks at issue.

Additionally, under OAR 471-030-0045(4), a continued claim for the latest of the weeks at issue, week 35-21, must have been claimed no later than September 11, 2021. Claimant claimed the weeks at issue on October 26, 2021. Therefore, even if claimant had filed an initial claim before the first week or series of weeks for which she claimed benefits, none of the weeks at issue were claimed timely. The result is the same even if claimant's continuing claims for Regular UI benefits were treated as having been claimed on October 8, 2021, the date she made weekly claims for PUA benefits, because October 8, 2021 is also after September 11, 2021. OAR 471-030-0045 contains no good-cause exception for failing to file a timely continued claim for benefits.

For the above reasons, claimant was not eligible for unemployment insurance benefits during the weeks at issue.

DECISION: Order No. 22-UI-185330 is affirmed.

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

DATE of Service: April 26, 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 desisyong ito.

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.

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