

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0322

Affirmed
Late Claims for Benefits Denied
Ineligible Weeks 13-21 through 35-21

PROCEDURAL HISTORY: On October 12, 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 from March 28, 2021 through September 4, 2021 (weeks 13-21 through 35-21) and therefore was ineligible for benefits for those weeks (decision # 81441). Claimant filed a timely request for hearing. On February 18, 2022, ALJ Murdock conducted a hearing, and on February 25, 2022 issued Order No. 22-UI-187362, affirming decision # 81441. On March 8, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

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. 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 June 1, 2020, claimant filed an initial claim for unemployment insurance benefits. Shortly after claimant filed the initial claim, the Department began determining whether claimant had sufficient wages in her base year for her initial claim to be monetarily valid.

(2) In October 2020, claimant got a temporary job for several weeks. In mid-November 2020, claimant was laid off from the temporary job. Thereafter, claimant wished to claim unemployment insurance benefits but the Department had still not determined whether her claim filed on June 1, 2020 was monetarily valid. Claimant decided to file a second initial claim for benefits hoping that the Department would determine the second claim faster. On November 15, 2020, claimant filed the second initial claim.

(3) Claimant made weekly claims for benefits for multiple weeks throughout the remainder of 2020 until late March 2021. At that time, claimant spoke to a Department representative and learned she "had been mistaken in filing a new initial claim while waiting for a determination on [her] first claim." Transcript

at 18. Thereafter, claimant decided to stop making weekly claims for benefits while she waited to hear about the status of her initial claim filed on June 1, 2020.

(4) On August 23, 2021, the Department informed claimant that her initial claim filed on June 1, 2020 was monetarily valid, and had been assigned a first effective week of May 24, 2020 through May 30, 2020 (week 22-20). In early September 2021, the Department advised claimant that it had completed adjudicating her work separation that had occurred prior to filing the June 1, 2020 initial claim and that she was not disqualified from receiving benefits based on the work separation.

(5) On September 16, 2021, claimant called the Department and, with assistance from a Department representative, claimed benefits for the weeks from March 28, 2021 through September 4, 2021 (weeks 13-21 through 35-21). These are the weeks at issue. The Department did not pay claimant benefits for the weeks at issue.

CONCLUSIONS AND REASONS: Claimant filed late claims for benefits for the weeks including March 28, 2021 through September 4, 2021 (weeks 13-21 through 35-21) and is ineligible to receive 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[.]

* * *

As directed by the Director, a continued claim must be filed in person at any Employment Department office in the state of Oregon, by United States mail, by fax, by internet, or by telephone. OAR 471-030-0045(3)(a)-(e). 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).

Claimant claimed benefits for weeks 13-21 through 35-21. None of the weeks at issue were the first effective week of claimant's benefit year. Therefore, under OAR 471-030-0045(4), her continued claims for benefits for weeks 13-21, 14-21, 15-21, 16-21, 17-21, and 18-21 were due by April 10, 2021, April 17, 2021, April 24, 2021, May 1, 2021, May 8, 2021, and May 15, 2021, respectively. Claimant's continued claims for weeks 19-21, 20-21, 21-21, 22-21, 23-21, and 24-21 were due by May 22, 2021, May 29, 2021, June 5, 2021, June 12, 2021, June 19, 2021, and June 26, 2021, respectively. Claimant's continued claims for weeks 25-21, 26-21, 27-21, 28-21, 29-21, and 30-21 were due by July 3, 2021, July 10, 2021, July 17, 2021, July 24, 2021, July 31, 2021, and August 7, 2021, respectively. Claimant's continued claims for weeks 31-21, 32-21, 33-21, 34-21, and 35-21 were due by August 14, 2021, August 21, 2021, August 28, 2021, September 4, 2021, and September 11, 2021, respectively.

The record shows that claimant did not file a continued claim for each of the weeks at issue by the timely filing deadline for each week. Rather, claimant claimed all of the weeks on September 16, 2021, which was after the seven-day deadline for each respective week. Claimant filed the claims late because she decided to stop making weekly claims for benefits while she waited to hear about the status of her initial claim filed on June 1, 2020. While it may have been understandable that claimant decided not to make weekly claims for benefits while waiting to hear back on the status of the June 1, 2020 initial claim, OAR 471-030-0045(4) contains no good-cause exception for failing to file a timely continued claim. Therefore, because claimant filed late claims for the weeks at issue, claimant was not entitled to receive benefits for weeks 13-21 through 35-21.

DECISION: Order No. 22-UI-187362 is affirmed.

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

DATE of Service: May 12, 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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