

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0406

Affirmed
Ineligible for Benefits
Weeks 37-21 through 39-21

PROCEDURAL HISTORY: On November 2, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was denied benefits for the weeks from September 12 through October 2, 2021 (weeks 37-21 through 39-21) because claimant's claims for benefits for those weeks were late (decision # 134219). Claimant filed a timely request for hearing. On March 9, 2022, ALJ Frank conducted a hearing, and on March 10, 2022 issued Order No. 22-UI-188361, affirming decision # 134219. On March 25, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On September 17, 2021, claimant filed an initial claim for unemployment insurance benefits. Claimant filed his initial claim via a telephone call with a representative from the Department. During the call, the representative was supposed to read claimant a script advising that even if the claim appeared non-valid to the representative, claimant should review his Wage and Potential Benefit Report provided by the Department and continue claiming benefits each week. Rather than do that, the representative incorrectly told claimant that his claim was non-valid and would remain non-valid, and failed to explicitly tell claimant to continue claiming benefits each week. However, the representative did not tell claimant to stop claiming benefits each week.

(2) Contrary to what the representative told claimant on September 17, 2021, the Department determined claimant had a valid claim for benefits with a first effective week of September 12, 2021 through September 18, 2021.

(3) On or about September 19, 2021, claimant received his Wage and Potential Benefit Report from the Department. The Wage and Potential Benefit Report stated that claimant's initial claim for benefits was valid.

(4) Because claimant was concerned about inadvertently committing fraud, the contradictory information he received regarding the validity of his initial claim caused him to delay making continued claims for benefits.

(5) On October 12, 2021, claimant called the Department and reached a representative. With the representative's assistance, claimant claimed benefits for the weeks from September 12, 2021 through October 2, 2021 (weeks 37-21 through 39-21). These are the weeks at issue. The Department gave claimant waiting week credit for week 37-21, and paid claimant benefits for weeks 38-21 and 39-21.

CONCLUSIONS AND REASONS: Claimant filed late claims for benefits for weeks 37-21 through 39-21 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[.]

* * *

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 gave claimant waiting week credit and paid claimant benefits for the weeks at issue, the Department bears the burden to establish by a preponderance of the evidence that benefits should not have been paid. *See Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976) (where the Department has paid benefits it has the burden to prove benefits should not have been paid).

Claimant filed continued claims for weeks 37-21 through 39-21. Because Week 37-21 was the first effective week of claimant's benefit year, claimant was required to file a continued claim no later than 13 days following the end of week 37-21, which was October 1, 2021. Claimant did not file a continued

claim for week 37-21 until October 12, 2021, which was after the 13-day deadline for week 37-21 had passed. As for weeks 38-21 and 39-21, neither of those weeks was the first effective week of claimant's benefit year. Claimant therefore had to claim benefits for week 38-21 by October 2, 2021, and claim benefits for week 39-21 by October 9, 2021. Claimant did not file a continued claim for those weeks until October 12, 2021, after the seven-day deadline for each respective week had passed.

The record shows that the contrary information claimant received regarding the validity of his initial claim caused him to decline initially to make continued claims for benefits. Specifically, when claimant filed his initial claim for benefits on September 17, 2021, the Department representative incorrectly informed claimant that his claim was non-valid and would remain non-valid, and failed to explicitly tell claimant to keep making continued claims for benefits each week. A few days later, claimant received a Wage and Potential Benefit Report that stated that claimant's initial claim was valid.

While claimant's confusion was understandable given this contradictory information, OAR 471-030-0045(4) contains no good-cause exception for failing to file a timely continued claim. Nor does the record show that the Department should be estopped from denying benefits for the weeks at issue under the doctrine of equitable estoppel. 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)).

The record fails to show that during the September 17, 2021 call, the representative told claimant not to claim benefits for the weeks at issue, or that the representative told claimant his initial claim for benefits was non-valid with the intention that it would induce claimant to stop filing weekly claims for benefits. Further, the doctrine of equitable estoppel requires claimant's reliance on the false statement to be reasonable and the record calls into question the reasonableness of claimant's reliance. Specifically, while the representative incorrectly stated that the initial claim was non-valid, the Wage and Potential Benefit Report cured this inaccuracy within an ample period of time for claimant to timely claim the weeks at issue. However, claimant did not contact the Department for clarification until weeks after receiving the Wage and Potential Benefit Report. For these reasons, equitable estoppel does not apply in claimant's situation.

Because claimant filed late claims for the weeks at issue, he is not entitled to benefits for those weeks.

DECISION: Order No. 22-UI-188361 is affirmed.

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

DATE of Service: June 10, 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.

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