

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0438

Affirmed
Late Request for Hearing Allowed
Request to Backdate Initial Claim Denied
Ineligible Weeks 11-20 through 41-20

PROCEDURAL HISTORY: On June 17, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision denying claimant's request to backdate her initial claim to March 8, 2020 and concluding that she was therefore ineligible to receive unemployment insurance benefits for the weeks including March 8, 2020 through October 10, 2020 (weeks 11-20 through 41-20) (decision # 73949). On July 7, 2021, decision # 73949 became final without claimant having filed a request for hearing. On July 13, 2021, claimant filed a late request for hearing on decision # 73949. ALJ S. Lee considered claimant's request, and on October 8, 2021 issued Order No. 21-UI-176751, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by October 22, 2021. On October 19, 2021, claimant filed a timely response to the appellant questionnaire. On January 20, 2022, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 21-UI-176751 was vacated and that a new hearing would be scheduled to determine whether claimant had good cause to file the late request for hearing and, if so, the merits of decision # 73949. On March 17, 2022, ALJ Scott conducted a hearing, and on March 23, 2022 issued Order No. 22-UI-189492, allowing claimant's late request for hearing and affirming decision # 73949. On April 5, 2022, claimant filed an application for review of Order No. 22-UI-189492 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.

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the portion of the order under review allowing claimant's late request for hearing is **adopted**. The remainder of this decision addresses the merits of decision # 73949, regarding whether claimant's initial claim for benefits is eligible to be backdated.

FINDINGS OF FACT: (1) On March 13, 2020, claimant became unemployed for reasons pertaining to the COVID-19 pandemic. However, claimant did not file for unemployment insurance benefits at that time because a statement made by her former employer's human resources department led her to believe that she would not be eligible for benefits.

(2) On October 14, 2020, claimant filed an initial claim for regular unemployment insurance (regular UI) benefits. The Department subsequently determined that claimant's claim was monetarily valid, and that the first effective week of her claim was the week ending October 17, 2020 (week 42-20). On October 23, 2020, claimant began claiming weekly regular UI benefits, starting with week 42-20.¹

(3) On November 20, 2020, claimant filed an initial claim for Pandemic Unemployment Assistance (PUA) benefits. Between November 22, 2020 and December 24, 2020, claimant filed weekly claims for PUA benefits for each of the weeks including March 8, 2020 through October 10, 2020 (weeks 11-20 through 41-20) except for the weeks including April 19, 2020 through April 25, 2020, May 24, 2020 through May 30, 2020, June 7, 2020 through June 13, 2020, and August 16, 2020 through August 22, 2020 (weeks 17-20, 22-20, 24-20, and 34-20).²

(4) On February 22, 2021, the Department served a Notice of Determination for Pandemic Unemployment Assistance concluding that claimant was not eligible for PUA benefits because she was eligible for regular UI benefits.

(5) On March 25, 2021, claimant contacted the Department and requested that the Department pay claimant regular UI benefits for the weeks of benefits she had previously claimed under her PUA claim.

(6) On May 27, 2021, claimant contacted the Department via its web contact form, requested that her regular UI claim be backdated to week 11-20, and claimed regular UI benefits for weeks 11-20 through 41-20. These are the weeks at issue. The Department did not pay claimant benefits for the weeks at issue.

CONCLUSIONS AND REASONS: Claimant was not eligible to backdate her initial claim for regular UI benefits to week 11-20.

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

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

* * *

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 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.

(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.

* * *

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;

* * *

Claimant became unemployed in March 2020. Despite this, and due to an apparent misunderstanding of her eligibility for benefits, claimant did not file her initial claim for regular UI benefits until October 14, 2020. Based on the date on which she filed her initial claim, her first effective week was established as week 42-20. Claimant began claiming weekly regular UI benefits that week. The record does not show that claimant sought to backdate her initial claim at that time. About a month later, claimant filed an initial claim for PUA benefits, and thereafter

sought PUA benefits for a time period that roughly corresponded with the gap between when she became unemployed and when she filed her initial claim for regular UI benefits. The Department notified claimant on February 22, 2021 that she was not eligible for PUA benefits because she was eligible for regular UI benefits. On March 25, 2021, claimant requested that the Department transfer her claims for PUA benefits to her claim for regular UI benefits. About two months later, claimant requested that her initial claim for regular UI benefits be backdated to March 8, 2020, and at that time claimed regular UI benefits for weeks 11-20 through 41-20.

Under typical circumstances, OAR 471-030-0040(e) would only allow for backdating of an initial claim for regular UI benefits if the Department had evidence that an individual had prior documented contact with the Employment Department or with any other state Workforce agency, in which case the Department would be permitted to backdate the initial claim to the date of the prior contact. However, in April 2020, due to the heavy workload that resulted from the COVID-19 pandemic, the Department suspended enforcement of the restrictions on backdating of initial claims, and instead permitted individuals to backdate their claims to as early as week 12-20; the Department revoked its liberalized backdating policy on March 16, 2021, and any initial claims filed thereafter were once again subject to the limitations of OAR 471-030-0040(e).³

At hearing, claimant testified that she spoke to a representative from the Department around the time that she filed her initial claim for regular UI benefits, and that the representative informed her that she “should be eligible” to backdate the claim. Transcript at 35. However, claimant did not testify—and the record does not otherwise show—that claimant actually requested that her claim be backdated at that time. Neither does the record show that claimant made, or attempted to make, contact with the Department at any time prior to October 14, 2020. While claimant’s subsequent attempts to claim PUA benefits for a similar time period show that she wished to be paid benefits for that period of time, neither OAR 471-030-0040(e), nor the Department’s temporary backdating policy at the time, imposed a duty on the Department to infer claimant’s intent and automatically backdate her regular UI claim on that basis, and in the absence of an affirmative request by the claimant that they do so.

The first instance in which claimant explicitly sought regular UI benefits for the period at issue was March 25, 2021, when claimant requested that her weekly PUA claims be transferred to her regular UI claim. Even if that request was implicitly construed as a request to backdate her initial regular UI claim, the request was too late because the Department had already revoked its policy of liberal backdating and claimant would only have been eligible to backdate her initial claim if she met the requirements of OAR 471-030-0040(e). Because she did not, claimant was not eligible to backdate her initial claim to March 8, 2020. Furthermore, because claimant’s continued claims for benefits for weeks 11-20 through 41-20 were filed for weeks which were prior to the first effective week of her claim, claimant is ineligible under OAR 471-030-0045(1)(a) to receive benefits for the weeks at issue.

DECISION: Order No. 22-UI-189492 is affirmed.

³ EAB has taken notice of these facts, which are within EAB’s specialized knowledge. 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.

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

DATE of Service: April 28, 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 ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

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 الإستئناف 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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