

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0483

Affirmed
Ineligible for Pandemic Unemployment Assistance
Late Claims for Benefits Denied
Request to Backdate Initial Claim Denied
Ineligible for Regular UI Benefits Weeks 05-21 through 40-21

PROCEDURAL HISTORY: On October 29, 2021, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was not entitled to PUA benefits effective December 6, 2020. Claimant filed a timely request for hearing on the October 29, 2021 administrative decision. On November 24, 2021, the Department served notice of an administrative decision concluding that claimant filed late claims for benefits for the weeks including January 31, 2021 through April 3, 2021 (weeks 05-21 through 13-21) and therefore was denied benefits for those weeks (decision # 72101). Also on November 24, 2021, the Department served notice of an administrative decision concluding that claimant filed late claims for benefits for the weeks including April 4, 2021 through May 29, 2021 (weeks 14-21 through 21-21) and therefore was denied benefits for those weeks (decision # 73118). Also on November 24, 2021, the Department served notice of an administrative decision concluding that claimant filed late claims for benefits for the weeks including May 30, 2021 through June 12, 2021 (weeks 22-21 through 23-21) and therefore was denied benefits for those weeks (decision # 73350). Also on November 24, 2021, the Department served notice of an administrative decision denying claimant's request to backdate her initial claim to June 13, 2021 and concluding that she was therefore ineligible to receive unemployment insurance benefits for the weeks including June 13, 2021 through July 31, 2021 (weeks 24-21 through 30-21) (decision # 75447). Also on November 24, 2021, the Department served notice of an administrative decision concluding that claimant filed late claims for benefits for the weeks including August 1, 2021 through September 25, 2021 (weeks 31-21 through 38-21) and therefore was denied benefits for those weeks (decision # 80330). Also on November 24, 2021, the Department served notice of an administrative decision concluding that claimant filed late claims for benefits for the weeks including September 26, 2021 through October 9, 2021 (weeks 39-21 through 40-21) and therefore was denied benefits for those weeks (decision # 80925). Claimant filed a timely request for hearing on decisions # 72101, 73118, 73350, 75447, 80330, and 80925.

On February 11, 2022, ALJ Monroe conducted a hearing on the October 29, 2021 administrative decision. Also on February 11, 2022, ALJ Monroe conducted a combined hearing on decisions # 72101, 73118, 73350, 75447, 80330, and 80925. On March 11, 2022, ALJ Monroe continued the combined hearing on decisions # 72101, 73118, 73350, 75447, 80330, and 80925. On March 29, 2022, ALJ Monroe issued Orders No. 22-UI-189874, 22-UI-189867, 22-UI-189875, 22-UI-189918, 22-UI-189873, and 22-UI-189871, affirming decisions # 72101, 73118, 73350, 75447, 80330, and 80925, respectively. On April 11, 2022, ALJ Monroe issued Order No. 22-UI-191054, affirming the October 29, 2021 administrative decision by concluding that claimant was not eligible to receive PUA benefits for the weeks including January 31, 2021 through September 4, 2021 (weeks 05-21 through 35-21). On April 18, 2022, claimant filed applications for review of Orders No. 22-UI-191054, 22-UI-189874, 22-UI-189867, 22-UI-189875, 22-UI-189918, 22-UI-189873, and 22-UI-189871 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 22-UI-191054, 22-UI-189874, 22-UI-189867, 22-UI-189875, 22-UI-189918, 22-UI-189873, and 22-UI-189871. For case-tracking purposes, this decision is being issued in septuplicate (EAB Decisions 2022-EAB-0478, 2022-EAB-0484, 2022-EAB-0482, 2022-EAB-0480, 2022-EAB-0481, 2022-EAB-0483, and 2022-EAB-0479).

WRITTEN ARGUMENT: Claimant filed three written arguments, dated April 18, 2022, May 10, 2022, and May 11, 2022, which EAB considered when reaching this decision.

In her May 11, 2022 written argument, claimant asserted that her PUA initial application, filed on October 12, 2021 and therefore after the deadline for filing new PUA claims,¹ should be backdated to August 3, 2021. Claimant's May 11, 2022 Written Argument at 3. Claimant based this assertion on the fact that a Department representative on August 3, 2021 incorrectly told her that she should not file an application for PUA benefits *because* the program was only for self-employed individuals. Claimant's May 11, 2022 Written Argument at 3. Claimant further asserted that she filed her PUA application after the deadline because she did not learn until later that PUA benefits were also available to individuals who were not self-employed. Claimant's May 11, 2022 Written Argument at 3. In so asserting, claimant argues that she would have been able to file a timely PUA application, and therefore would have been eligible for PUA benefits, if not for the misinformation given to her on August 3, 2021. However, claimant has not shown that the Department should be estopped from using the actual filing date of October 12, 2021 as the date of her PUA application.

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 [mis]representation must be justifiably relied upon by [the party] in

¹ See generally U.S. Dep't of Labor, UIPL 16-20, Change 6 (September 3, 2021) at II-1.

taking action or in refraining from it to [their] damage.’ *Meader v. Francis Ford, Inc.*, 286 Or. 451, 456, 595 P.2d 480 (1979) (emphasis added).”

Claimant has not met her burden to apply the doctrine of equitable estoppel. Even if the Department’s representative made a false representation in telling claimant that PUA benefits were reserved only for self-employed individuals, the record does not show that the representative made this statement with an intent to deceive claimant by knowingly misstating the requirements of the PUA program *or* that claimant relied on this statement to her detriment because the record does not show that claimant otherwise would have met the definition of a “covered individual” such that she could have been eligible for PUA had she filed at an earlier date.

In pertinent part, the CARES Act defines a “covered individual” as an individual who “is not eligible for regular compensation or extended benefits under state or federal law or pandemic emergency unemployment compensation under section 2107, including an individual who has exhausted all rights to regular unemployment or extended benefits under state or federal law or pandemic emergency unemployment compensation under section 2107” and provides a self-certification that the individual “is otherwise able to work and available for work within the meaning of applicable State law,” but is rendered unemployed or unavailable to work because of one or more of 11 listed reasons that relate to the COVID-19 pandemic. Pub. L. 116-136, § 2102(a)(3)(A). The Department found that claimant’s regular UI application filed on August 3, 2021 was monetarily valid effective August 1, 2021, with a benefit year ending on July 30, 2022. The record also shows that claimant had a prior monetarily valid claim for regular UI benefits which ended on June 12, 2021. Because claimant was eligible for regular UI benefits during the period of time for which she otherwise would have claimed PUA benefits, claimant would not have been eligible for PUA benefits even if she had filed a PUA application on August 3, 2021. As a result, claimant did not detrimentally rely on the misinformation given to her on August 3, 2021 and claimant has not met the burden to show that the doctrine of equitable estoppel is appropriate in this matter.

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the orders under review are **adopted**.

DECISION: Orders No. 22-UI-191054, 22-UI-189874, 22-UI-189867, 22-UI-189875, 22-UI-189918, 22-UI-189873, and 22-UI-189871 are affirmed.

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

DATE of Service: July 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, 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

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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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