

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1055

Affirmed
Base Year Extension Denied

PROCEDURAL HISTORY: On August 4, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision denying claimant's request for a base year extension. Claimant filed a timely request for hearing. On September 2, 2016, ALJ M. Davis conducted a hearing, and on September 29, 2016 issued Hearing Decision 16-UI-67224, affirming the Department's decision. On September 13, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On July 25, 2016, claimant filed an initial claim for unemployment insurance benefits. Her claim was valid, and her weekly benefit amount was \$207. Claimant's base year included April 1, 2015 through March 31, 2016.

(2) In January 2015 claimant had an on-the-job injury. She was placed on restricted duty by her physician until March 10, 2015, when her physician released her for full duty.

(3) In July 2015, claimant was reinjured, and placed on restricted duty from August 4, 2015 to June 30, 2015. During that time, claimant was restricted from lifting, carrying, pushing and pulling more than ten pounds. She was restricted to four hours of office or desk work per day, restricted to work in Clark County, restricted to minimal stairs, and was in need of an ergonomic sit/stand work station.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant's request for a base year extension should be denied.

To qualify for a base year extension, an individual must prove that they were "incapable of work" during the greater part of a calendar quarter in the base year. *See* ORS 657.170. "Incapable of work" means unable "to engage in any gainful occupation solely because of physical or mental defect, disease or injury as verified in writing by a licensed medical or therapeutic practitioner" or other satisfactory evidence. OAR 471-030-0023(1).

Although there is no dispute that claimant was suffering from an injury before, during and after her base year, the record contains notes from claimant's physician spanning the entire base year that conclusively establish that she was released by a physician for modified duty throughout the base year. Consequently, the record fails to show that claimant was "incapable" of "engag[ing] in any gainful occupation" during any part of her base year, and her request for a base year extension must be denied.

Claimant argued that despite what the physician's notes in evidence stated she was entirely incapable of working after her July 2015 re-injury, and had documentation from a physician to support her claim.¹ The ALJ left the record open for claimant to submit it, but she did not, nor has she done so during the approximately eight weeks since the Department issued its decision in August 2016.² The applicable rule requires written verification or other satisfactory evidence of incapacity as a condition of allowing an individual's base year extension. Claimant's testimony at the hearing was not "written verification," and, having been made in her own interest and contradictory to the documented opinion of the physician treating claimant's injury during the base year, was not the type of satisfactory evidence that can be relied upon to establish her incapacity for purposes of extending her base year.

Claimant also argued that she should be considered incapable of working because she was unable to perform the job she held during her base year, and cannot work elsewhere because she would lose her residence if she left that job. There is no dispute that claimant's circumstances are as she described them and present a barrier to obtaining a different job. However, the rule requiring proof of incapacity is not written in terms of incapacity to work at the particular job the individual held during the base year, but rather incapacity to do any work at all, and the rule does not provide any exceptions for "good cause" or unique circumstances like those of claimant. The fact that claimant was incapable of performing her duties at the specific job she held during her base year does not qualify her for a base year extension.

DECISION: Hearing Decision 16-UI-67224 is affirmed.

J. S. Cromwell and D. P. Hettle;
Susan Rossiter, not participating.

DATE of Service: September 20, 2016

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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¹ Audio recording at ~31:00.

² *Id.* at 33:00.