

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-1055-R**

*Request for Reconsideration Granted*  
*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). On September 20, 2016, EAB issued Appeals Board Decision 2016-EAB-1055, denying claimant's request for a base year extension. On September 30, 2016, claimant submitted a timely written argument and response to Appeals Board Decision 2016-EAB-1055 in which she presented new facts about her case and asked that we reverse the hearing decision under review and allow her request for a base year extension. This decision is issued pursuant to EAB's authority under ORS 657.290(3).

In Appeals Board Decision 2016-EAB-1055, we concluded that claimant was not entitled to a base year extension. As we explained, while there is no dispute that claimant suffered from a debilitating injury that severely affected her ability to work for her employer during and even after her base year, the record she developed at the hearing conclusively established that she *was* capable of doing some work within the limitations her physician set, even though she was *not* capable of doing the specific job for the specific employer she worked for in the base year. We also explained that, according to ORS 657.170 and OAR 471-030-0023(1), only individuals who are entirely incapable of doing any work during the greater part of any calendar quarter in their base years are entitled to base year extensions, and because claimant did *not* meet that standard, she was not entitled to a base year extension.

In claimant's latest argument, she reiterated her request for a base year extension and submitted some new written documentation from one of her physicians in support of her request. We note that the new information is, in all likelihood, inadmissible before EAB under ORS 657.275(1) and OAR 471-041-0090 because claimant has had months to produce such evidence and did not establish that her primary physician's temporary absence from his or her office justified such a long delay in producing the information. Even assuming for the sake of argument that the new information was admissible, however, the outcome of EAB's decision would remain the same for the reasons that follow.

While the documents claimant submitted to EAB establish that claimant had more than just the work-related injury during her base year, and the documents include an explanation by a physician that her pre-existing health conditions exacerbated her injury and likely made her recovery from the injury longer and more difficult, the documents did not identify any dates or date ranges during which the combination of injuries claimant suffered made her entirely incapable of any type of gainful employment, nor did the documents include reference to any physicians' order(s) restricting her from working for any period of time during her base year.

As noted in previous decisions in this matter, in order to establish that she was entitled to a base year extension, claimant must have provided written information from a physician stating that she was incapable of *any* work – not just work for her current employer – during the greater part of one or more of the following periods: April 2015 to June 2015, July 2015 to September 2015, October 2015 to December 2015 and/or January 2016 to March 2016. Even considering the new information claimant offered to EAB, the only specific evidence about claimant's capacity for work during the specific periods at issue that exist in this record are the series of "occupational health work status reports" contained in Exhibit 1 that clearly specify that claimant was released for modified duty throughout the base year, and was *not* fully restricted from doing any work. Because the record in this matter conclusively establishes that claimant was not "incapable" of work, *i.e.* was not unable to engage in *any* gainful occupation, in any part of her base year, her request for a base year extension must be denied.

For the above reasons, we conclude that we did not err in affirming the ALJ's denial of claimant's base year extension request. Because we find no error of fact or law in EAB Decision 2016-EAB-1055 that would require correction, we adhere to that decision on reconsideration as clarified herein. *See* ORS 657.290(3), OAR 471-041-0145 (October 29, 2006) (reconsideration by EAB may include making a new decision "to the extent necessary and appropriate or the correction of a previous error of fact or law").

**DECISION:** Reconsideration is granted. Hearing Decision 16-UI-67224 is adhered to on reconsideration as clarified herein.

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

**DATE of Service: October 6, 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](http://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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