

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-1129**

*Affirmed*  
*Invalid Claim*

**PROCEDURAL HISTORY:** Effective December 28, 2014, claimant filed an initial claim for unemployment insurance benefits. On January 13, 2015, the Oregon Employment Department (the Department) served notice of a claim determination concluding that claimant had a valid claim for unemployment insurance benefits with a weekly benefit amount of \$549, and a maximum benefit amount of \$14,272. On January 23, 2015, the claim determination became final. Between December 2014 and April 27, 2015, claimant received \$7,686 in unemployment insurance benefits.

On November 16, 2015, the Department issued notice of an amended claim determination concluding that claimant did not work in subject employment in his base year, and, consequently, did not have a valid claim for unemployment insurance benefits. On November 26, 2015, the amended claim determination became final without claimant having filed a timely request for hearing. On December 10, 2015, the Department issued notice of an administrative decision, based on the amended claim determination, assessing a \$7,686 overpayment (decision # 92956). On December 30, 2015, decision # 92956 became final without claimant having filed a timely request for hearing.

On June 7, 2016, claimant filed late requests for hearing on the amended claim determination and decision # 92956. On June 16, 2016, the Office of Administrative Hearings (OAH) mailed notice of two hearings scheduled for June 30, 2016. On June 30, 2016, ALJ Holmes-Swanson conducted two hearings, and on July 6, 2016 issued Hearing Decision 16-UI-63137, dismissing claimant's late request for hearing on the amended claim determination, and Hearing Decision 16-UI-63141, dismissing claimant's late request for hearing on decision # 92956. On July 11, 2016, claimant filed timely applications for review of both decisions with the Employment Appeals Board (EAB). On July 19, 2016, EAB issued Employment Appeals Board Decisions 2016-EAB-0834 and 2016-EAB-0835, allowing claimant's late requests for hearing.

On August 25, 2016, ALJ Holmes-Swanson conducted hearings on the merits of the amended claim determination and decision # 92956. The hearing on the amended claimant determination was continued to September 22, 2016. On August 31, 2016, ALJ Holmes-Swanson issued Hearing Decision 16-UI-66634, affirming decision # 92956. On September 7, 2016, claimant filed an application for review of

Hearing Decision 16-UI-66634 with EAB. On September 22, 2016, ALJ Holmes-Swanson concluded the hearing on the amended claimant determination and issued Hearing Decision 16-UI-67904, affirming the determination. On September 30, 2016, EAB issued Employment Appeals Board Decision 2016-EAB-1042, affirming Hearing Decision 16-UI-66634. On October 3, 2016, claimant filed an application for review of Hearing Decision 16-UI-67904 with EAB.

EAB considered the entire hearing record, including claimant's documents, which were offered and received into evidence, and marked as Exhibit 2,<sup>1</sup> although Hearing Decision 16-UI-67904 erroneously states that only Exhibit 1 was admitted into evidence.<sup>2</sup> EAB also considered claimant's written argument. In his argument, as at hearing, claimant asserts that although his company made contributions toward unemployment insurance taxes from 2011 through 2014, the Department, after having determined that his work for his company was not in subject employment, only mailed him a partial refund of those contributions, which he did not receive due to the Department having an incorrect mailing address. However, the only issue before EAB is whether claimant did not work in subject employment in his base year, and, consequently, did not have a valid claim for unemployment insurance benefits. EAB's review is therefore limited to that issue.

**FINDINGS OF FACT:** (1) The base year for claimant's December 28, 2014 initial claim for benefits was October 1, 2013 through September 30, 2014. In the base year, claimant worked exclusively as the general manager for Trident Management, LLC, a limited liability company of which he was the sole member. Claimant's only base year wages were for services he performed for Trident Management, LLC.

(2) Trident Management, LLC did not opt in to Oregon's unemployment insurance program with respect to claimant's employment.

**CONCLUSIONS AND REASONS:** We agree with the Department and the ALJ that that claimant did not work in subject employment in his base year, and, consequently, did not have a valid claim for unemployment insurance benefits.

ORS 657.150(2) provides, in relevant part, that to qualify for benefits an individual must have worked in subject employment in the base year with total base year wages of \$1,000 or more and have total base year wages equal to or in excess of one and one-half times the wages in the highest quarter of the base year, or the individual must have worked a minimum of 500 hours in subject employment during the base year. ORS 657.044(1)(c) provides that subject employment does not include service performed for a limited liability company by a member, including members who are managers, as defined in ORS 63.001. ORS 63.001(21) defines "member" as a person or persons with both an ownership interest in a limited liability company and all the rights and obligations of a member.

In the present case, it is undisputed that in claimant's base year, he worked exclusively as the general manager for Trident Management, LLC, a limited liability company of which he was the sole member, and that his only base year wages were for services he performed for Trident Management, LLC.

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<sup>1</sup> Audio Record (August 25, 2016) at 7:20-10:30.

<sup>2</sup> Hearing Decision 16-UI-67904 at 1.

Claimant therefore did not work in subject employment in his base year. At hearing, the Department's witness testified that claimant, through Trident Management, could have opted in to Oregon's unemployment insurance program with respect to claimant's employment, but did not do so. Transcript at 24-25. Claimant did not dispute that testimony. ORS 657.044(1)(c) and ORS 657.150(2) therefore apply, and claimant did not have a valid claim for unemployment insurance benefits.

**DECISION:** Hearing Decision 16-UI-67904 is affirmed.

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

**DATE of Service: October 21, 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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