

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1298

Affirmed
Redetermination Denied

PROCEDURAL HISTORY: On September 23, 2016, the Oregon Employment Department (the Department) served notice of a Wage and Potential Benefit Report (WPBR) showing claimant worked 896 hours for Evraz Oregon Steel during the base year of April 1, 2015 through March 31, 2016 and earned \$23,452.38. On October 3, 2016, claimant filed a timely request for hearing regarding the September 23, 2016 WPBR. On November 3, 2016, ALJ Frank conducted a hearing at which the employer failed to appear, and on November 10, 2016, issued Hearing Decision 16-UI-70934, affirming the Department's decision and concluding that claimant was not entitled to have wages added to the claim determination. On November 18, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument to EAB, but failed to certify that he provided a copy of his argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we considered the entire record, but did not consider claimant's argument when reaching this decision.

FINDINGS OF FACT: (1) Claimant filed an initial claim for unemployment benefits effective the week beginning September 18, 2016. The base year for claimant's claim was April 1, 2015 through March 31, 2016.

(2) During April 1, 2015 through March 31, 2016, claimant worked 896 hours for Evraz Oregon Steel and earned \$23,452.38.

(3) Claimant did not work from April 23, 2015 to October 12, 2015, at least in part due to injury, and the wages and potential benefit report shows no earnings for the third quarter of 2015. Exhibit 1.

CONCLUSIONS AND REASONS: We agree with the ALJ that wages should not be added to claimant's claim determination.

ORS 657.266 provides that the Department must promptly make an initial determination of eligibility and determine the total amount of wages paid to the claimant during the base year. Determinations can

be amended if the claimant provides evidence that his earnings or hours were different from the Department's initial determination. OAR 471-030-0048 (August 3, 2011). The only matter at issue for the November 3, 2016 hearing was if the wages contained in the WPBR issued on September 23, 2016 were correct. Claimant's uncontroverted testimony at hearing was that the wages in the report were accurate. Audio Record at 11:01 to 11:20. Thus, we conclude that the Department's wage determination was correct and wages should not be added to the claim.

Although claimant testified that the wages contained in the WPBR were accurate, he asserted that he wanted to extend his base year because he was unable to work during the third quarter of 2015 due to an injury. Audio 9:15 to 11:20. The issue of whether claimant was eligible to extend his base year was not before the ALJ at hearing and is not before EAB in its review of Hearing Decision 16-UI-70934.¹ As the ALJ stated at hearing, claimant should contact the Department to request a base year extension or to appeal an existing denial of a base year extension if he had not already done so.

DECISION: Hearing Decision 16-UI-70934 is affirmed.

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

DATE of Service: December 13, 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 A claimant shall be paid benefits in an amount determined from earnings in the claimant's base year. ORS 657.150(1). 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) (August 1, 2004).