

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-1007**

*Affirmed*  
*Request for Redetermination Denied*

**PROCEDURAL HISTORY:** At some point prior to June 27, 2017, the Oregon Employment Department (the Department) served notice of a wage and potential benefit report concluding claimant had base year wages of \$16,057.45. Claimant subsequently requested redetermination, claiming that the Department's report was missing over \$5,000 in base year wages. On June 27, 2017, the Department served notice of administrative decision denying claimant's request for redetermination. On July 7, 2017, claimant filed a timely request for hearing. On August 2, 2017, ALJ Seideman conducted a hearing, and on August 4, 2017 issued Hearing Decision 17-UI-89694, affirming the Department's decision. On August 24, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) On May 5, 2017, claimant filed an initial claim for unemployment insurance benefits. The base year of an initial claim filed on that date included all four quarters of 2016.

(2) During 2016, claimant's gross wages from employment totaled \$21,493.77. The employer made pre-tax contributions of \$5,436.32 to a cafeteria plan on claimant's behalf for a medical expense account. Claimant's taxable income, excluding the cafeteria plan contributions, totaled \$16,057.45.

**CONCLUSIONS AND REASONS:** We agree with the ALJ that claimant's request for redetermination should be denied.

ORS 657.150 provides, generally, that an individual's qualification for benefits and her weekly and maximum benefit amounts are based on the individual's "wages" during the base year. "Wages" are generally defined to include "all remuneration for employment." ORS 657.105(1). However, there are many exclusions from that definition set forth in ORS chapter 657. ORS 657.115, for example, states that "wages" "does not include the amount of any payment made to, or on behalf of, an individual or any of the individual's dependents on account of . . . [r]etirement . . . [m]edical or hospitalization expenses . . ." ORS 657.115(1). That law also states that "payment made" includes "amounts paid by an employing unit for insurance or annuities or into a fund." ORS 657.115(2). Additionally, the Department's rules

provide that “[e]mployee benefits paid through a cafeteria plan . . . are not included in wages . . . even if paid through a payroll deduction.” OAR 471-031-0205 (December 1, 2008).

There is no dispute in this case that claimant’s gross base year earnings totaled \$21,493.77. Likewise, there is no dispute that claimant’s employer paid a portion of claimant’s gross earnings, totaling \$5,436.32, into a cafeteria plan/medical expense account on her behalf. However, an individual’s *earnings* are not the same as *wages*. Although claimant *earned* \$21,493.77, the above-cited laws and rules specifically state that “*wages*,” for purposes of the unemployment insurance program, do not necessarily include all of an individual’s earnings. In this case, the payments made by the employer on behalf of claimant cannot be considered “wages” because they were the sorts of payments into a fund through a pre-tax payroll deduction that are specifically excluded from being considered “wages” under the cited laws and rule. In short, the effect of the laws and rule is that although claimant earned over \$21,000 during her base year, only \$16,057.45 of her earnings are “wages” for purposes of determining claimant’s qualification for benefits and weekly and maximum benefit amounts. The Department and ALJ therefore did not err in denying claimant’s request for redetermination.

**DECISION:** Hearing Decision 17-UI-89694 is affirmed.

J. S. Cromwell and D. P. Hettle.

**DATE of Service:** September 18, 2017

**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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