

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-1008**

*Hearing Decision 17-UI-89881 Reversed*  
*Issue is Not Ripe for Review*

**PROCEDURAL HISTORY:** On February 5, 2017, claimant filed an initial claim for unemployment insurance benefits. On February 8, 2017, the Oregon Employment Department (the Department) served notice of a wage and potential benefit report concluding that claimant's claim for benefits was nonvalid because she had not earned sufficient base year wages. On February 21, 2017, claimant filed a timely request for hearing.<sup>1</sup> On March 21, 2017, claimant re-requested a hearing. On March 27, 2017, ALJ Kangas issued Hearing Decision 17-UI-79708, dismissing claimant's request for hearing as late subject to her right to renew her request by responding to an appellant questionnaire by April 10, 2017. On April 6, 2017, claimant responded to the appellant questionnaire. On April 10, 2017, the Office of Administrative Hearings (OAH) sent a letter canceling Hearing Decision 17-UI-79708, and on April 19, 2017 mailed notice of a hearing scheduled for May 2, 2017. On May 2, 2017, ALJ Murdock conducted a hearing, and on May 5, 2017 issued Hearing Decision 17-UI-82758, allowing claimant's request for hearing, adding \$951 to claimant's wage and potential benefit report, and concluding that claimant's claim for benefits was still nonvalid because she had insufficient base year wages. On May 17, 2017, claimant filed an application for review with the Employment Appeals Board (EAB). On May 19, 2017, EAB issued Appeals Board Decision 2017-EAB-0601, reversing Hearing Decision 17-UI-82758 and remanding the matter for additional evidence. On July 17, 2017, OAH mailed notice of a hearing scheduled for August 2, 2017. On August 2, 2017, ALJ Murdock conducted a hearing, and on August 8, 2017 issued Hearing Decision 17-UI-89881, concluding claimant's "claim determination reflects all of the wages or hours worked in subject employment." On August 24, 2017, claimant filed an application for review of Hearing Decision 17-UI-89881.

**FINDINGS OF FACT:** At all relevant times, claimant's weekly benefit amount was \$308, and six times claimant's weekly benefit amount was \$1,848. In November 2016, claimant worked for Sadie Photography. In December 2016, claimant worked for Canary, LLC and earned \$951.00. In December

<sup>1</sup> See Appeals Board Decision 2017-EAB-0601, adopting the ALJ's conclusion in Hearing Decision 17-UI-82758 allowing claimant's request for hearing in this matter.

2016 and January 2017, Sadie Photography paid claimant \$1,331.67 based on her work in November 2016.

**CONCLUSIONS AND REASONS:** We disagree with the ALJ and conclude that the record developed at the hearings fails to support the Department’s February 8, 2017 wage and potential benefit report.

In Hearing Decision 17-UI-89881, the ALJ concluded that claimant’s “claim determination reflects all of the wages or hours worked in subject employment” because, although \$951.00 from Canary LLC should be added to her claim, the “Department has yet to conclude an investigation into whether Sadie Photography is an ‘employer’ that is subject to ORS Chapter 657,” and “evidence does not exist at present to establish that claimant earned sufficient wages from subject employment to qualify for benefits on the new claim.”<sup>2</sup> We disagree that the record supports the ALJ’s determination.

The Department’s February 9, 2017 wage and potential benefit report found that claimant’s claim was “nonvalid” because, in pertinent part, “Our records show that you have not earned \$1,848 since the beginning date of your previous unemployment insurance claim. For this reason, you do not qualify for unemployment insurance benefits. To qualify you must have earned six times your new weekly benefit amount.” However, at the hearings in this matter the record developed showed that claimant actually earned \$2,282.67 since the beginning date of her previous unemployment insurance claim, thus rebutting the Department’s report to the contrary. The ALJ’s decision upholding the Department’s February 9, 2017 wage and potential benefit report is, therefore, not supported by substantial evidence and it must be reversed.

In reaching this decision, we are not holding that claimant has a monetarily valid claim for unemployment insurance benefits or should be paid benefits, nor are we holding that she does not have a monetarily valid claim. This decision is confined to the conclusion that there is not substantial evidence to support the ALJ’s conclusion that the Department’s wage and potential benefit report “reflects all of the wages or hours worked in subject employment.” In fact, it appears from the Department witness’s testimony that the Department is still investigating the matter, that the question of whether or not claimant’s earnings from Sadie Photography should be included in her wage and potential benefit report is not capable of being answered at this time, and that the issue of whether or not claimant’s wage and potential benefit report is complete is not yet ripe for appeal. Audio recording at ~ 13:20-14:25, 31:35-32:00, 34:54-35:35.<sup>3</sup> Hearing Decision 17-UI-89881 therefore is reversed.

**DECISION:** Hearing Decision 17-UI-89881 is set aside, as outlined above.

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

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<sup>2</sup> Hearing Decision 17-UI-89881 at 2 and 3.

<sup>3</sup> The Department’s witness testified, “I can’t do anything on my side. I can just refer it out to somebody to do a further investigation \* \* \* I have started that and I don’t know where the progress is on that. Um, I can contact the – the regional manager for that district regarding the audit. \* \* \* I don’t know with specificity what the – how fast an auditor can get out there.” Audio recording at 34:54-35:35.

**DATE of Service: August 29, 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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