

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1494

Affirmed
Base Year Extended One Calendar Quarter

PROCEDURAL HISTORY: On October 23, 2017, 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 December 5, 2017, ALJ Frank conducted a hearing, and on December 8, 2017, issued Hearing Decision 17-UI-98556, concluding claimant's base year should be extended one calendar quarter. On December 28, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument to the extent it was based on the record.

FINDINGS OF FACT: (1) On September 3, 2015, claimant had an on-the-job injury consisting of a rotator cuff tear for which she was off work and eventually had surgery.

(2) On or about April 30, 2017, claimant filed an initial claim for unemployment insurance benefits. The Department determined that her claim was valid and that her weekly benefit amount was \$167. Claimant's base year was established as January 1, 2016 through December 31, 2016.

(3) On October 16, 2017, claimant's medical provider certified that during 2016, claimant was "unable to work" from January 1, 2016 through May 3, 2016, but released claimant to regular work on May 4, 2016. Exhibit 1.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant's request for a base year extension should be granted and that her base year should be extended by one calendar quarter.

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) (January 11, 2018).

Here, there is no dispute that claimant was suffering from a rotator cuff injury before and during her base year and that the record contains a Department “Request for Extension of Base Year” form that was completed and signed by claimant’s physician in which he certified that due to her injury claimant was “unable to work” from January 1, 2016 through May 3, 2016. Exhibit 1. Consequently, the record shows that claimant was “incapable” of “engag[ing] in any gainful occupation” during the entire 13 weeks of the first calendar quarter of her base year, but only during five of the 13 weeks of the second calendar quarter of her base year. As she was incapable of work during the greater part of only one calendar quarter, we agree with the ALJ that claimant’s base year should be extended for only one calendar quarter. Hearing Decision 17-UI-98556 at 2.

In written argument, claimant asserted that her base year “should have been extended further than one calendar quarter” because she was off work “much longer than from January 1, 2016 through March 3, 2016”, referencing the period from September 3, 2015 through May 4, 2016. Written argument at 1. However, the base year which she seeks to have extended did not begin until January 1, 2016 and the applicable rule requires written verification or other satisfactory evidence of *incapacity* during “the greater part of a calendar quarter” as a condition of allowing a base year extension. Simply being off work does not suffice. Moreover, the rule requiring proof of incapacity is not written in terms of incapacity to work at the particular job or occupation the individual held during the base year, but rather the incapacity to do any work at all, and the rule does not provide any exceptions for “good cause” or unique circumstances like those of claimant. The fact that claimant was unable to work in her chosen occupation prior to her base year and during less than the greater part of the second calendar quarter of her base year does not qualify her for a base year extension greater than one calendar quarter.

DECISION: Hearing Decision 17-UI-98556 is affirmed.

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

DATE of Service: February 2, 2018

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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