

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0888

Affirmed
Base Year Extension Denied

PROCEDURAL HISTORY: On July 30, 2018, 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 August 23, 2018, ALJ Shoemake conducted a hearing, and on August 31, 2018 issued Order No. 18-UI-115860, affirming the Department's decision. On September 10, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) In October 2011, claimant had an on-the-job injury to his knee while engaging in his customary occupation of welder, for which he had surgery in January 2012 and January 2014. His worker's compensation claim was closed on June 13, 2018. As a result of his work injury, claimant suffered permanent disability and was no longer able to perform welding work. However, he was eventually released to perform some forms of work with restrictions. During the 1st quarter of 2017, he earned \$11,410.41 in base year wages.¹

(2) On June 23, 2018, claimant filed an initial claim for unemployment insurance benefits. The Department determined that his base year was January 1, 2017 through December 31, 2017 and that his claim was monetarily invalid because he had insufficient wages and hours to establish a valid claim. On July 9, 2018, claimant told a Department employee that during the entire year of 2017, he was released to perform, and physically capable of performing, sedentary work such as basic office work.

(3) Claimant's "Request for Extension of Base Year", was signed by a physician that was not claimant's attending physician and indicated that claimant was incapable of performing any work during three quarters of 2017, including the 1st quarter of 2017, contrary to the Department's records, and that he was both unable to work and partially released from work during the entire 3rd quarter of 2017. Exhibit 1.

¹ We take notice of this fact, which is contained in Employment Department records. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.

CONCLUSIONS AND REASONS: We agree with the Department and ALJ. Claimant's request for a base year extension should be denied.

To qualify for a base year extension, an individual must prove that he or she was “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).

Claimant’s “Request for Extension of Base Year” indicated that claimant was incapable of performing any work during the first, second and fourth quarters of 2017. Exhibit 1. However, although that form was signed by a physician, the physician in question also certified that he “did not attend to this person during the above periods [2017].” Moreover, that document contained internally inconsistent information about claimant’s ability to work during the 3rd quarter of 2017, and was contradicted by Department records that showed that claimant earned \$11,410.41 in wages during the 1st quarter of 2017, which claimant did not dispute. Finally, claimant did not dispute that on July 9, 2018, he told a Department representative that during the entire year of 2017, he was released to perform, and physically capable of performing, sedentary work such as basic office work.

Accordingly, viewing the record as a whole, claimant failed to meet his burden to show that he was “incapable” of “engag[ing] in any gainful occupation” during any part of his 2017 base year, and for that reason, his request for a base year extension must be denied.

DECISION: Order No. 18-UI-115860 is affirmed.

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

DATE of Service: October 15, 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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