

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0361**

*Affirmed*  
*Base Year Extension Not Allowed*

**PROCEDURAL HISTORY:** On March 7, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant's request for a base year extension was not allowed. Claimant filed a timely request for hearing. On April 8, 2019, ALJ Snyder conducted a hearing, and on April 10, 2019 issued Order No 19-UI-127959, affirming the Department's decision. On April 15, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) On January 9, 2019, claimant filed an initial claim for benefits. Claimant's claim was determined valid with a base year of October 1, 2017 through September 30, 2018, which encompassed the fourth quarter of 2017 and the first, second and third quarters of 2018.

(2) On January 31, 2019, claimant requested an extension to the base year for his claim due to an injury to his hand on March 3, 2018, which was in the first quarter of 2018.

(3) Claimant had hand surgery approximately a week after he sustained the injury, or around March 10, 2018. Claimant was unable to work after the surgery. Claimant's physician released him to work with light duty restrictions approximately six weeks after the surgery, or around April 21, 2018. The principal restriction on claimant's work was that he was not allowed to lift more than ten pounds. However, claimant's employer did not have light duty work for him to perform.

**CONCLUSIONS AND REASONS:** Claimant's request for a base year extension is not allowed.

ORS 657.170(1) provides that if an individual has been incapable of work during the greater part of any calendar quarter during the base year, the base year shall be extended by a calendar quarter. With limited exceptions, none of which are applicable here, no extension to an individual's base year shall exceed four calendar quarters. OAR 471-030-0023(1) (January 11, 2018) states that "incapable of work" means the inability to engage in any gainful occupation due to a physical or mental defect, disease or injury.

The facts in this record do not show that claimant was incapable for work due to his hand injury for the greater part of any calendar quarter during his base year. Claimant injured his hand, had hand surgery and recovered from that surgery during the first and second quarters of 2018. Assuming claimant was incapable of any work in the first quarter after he injured his hand, the period of time of that incapacity ran from the date of the injury on March 3, 2018 through the end of that first quarter on March 31, 2018. The total number of days in the first quarter that claimant was incapable of working was 29 days and the total number of days between January 1, 2018 through March 31, 2018, the duration of the first quarter of 2018, was 90 days. Because the greater part of the first quarter, or more than half of the days in it, was 46 days and claimant was incapacitated only for 29 days, he is not entitled to an extension of his base year based on the impacts of his hand injury on his ability to work in the first quarter of 2018.

In the second quarter of 2018, running from April 1, 2018 through June 30, 2018, claimant was incapacitated until approximately April 21, 2018, when he was released to light duty work by a physician. Although claimant's employer did not have light duty work for him, that release evidenced that claimant was physically capable of performing work for employers that did have available work within the light duty restrictions. Consequently, the period of claimant's incapacity during the second quarter of 2018 was the 21 days between April 1, 2018 and April 21, 2018. However, the total number of days in the second quarter was 91 days, and the 21 days of incapacity is significantly less than the 46 days needed to constitute the greater part of the second quarter. Claimant therefore is not entitled to an extension of his base year based on the impacts of his hand injury in the second quarter of 2018.

Claimant's request for a base year extension is denied.

**DECISION:** Order No. 19-UI-127959 is affirmed.

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

**DATE of Service:** May 17, 2019

**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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# Understanding Your Employment Appeals Board Decision

## English

Attention – This decision affects your unemployment benefits. If you do not understand this decision, contact the Employment Appeals Board immediately. If you do not agree with this decision, you may file a Petition for Judicial Review with the Oregon Court of Appeals following the instructions written at the end of the decision.

## Simplified Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

## Traditional Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

## Tagalog

Paalala – Nakakaapekto ang desisyong ito sa iyong mga benepisyo sa pagkawala ng trabaho. Kung hindi mo naiintindihan ang desisyong ito, makipag-ugnayan kaagad sa Lupon ng mga Apela sa Trabaho (Employment Appeals Board). Kung hindi ka sumasang-ayon sa desisyong ito, maaari kang maghain ng isang Petisyon sa Pagsusuri ng Hukuman (Petition for Judicial Review) sa Hukuman sa Paghahabol (Court of Appeals) ng Oregon na sinusunod ang mga tagubilin na nakasulat sa dulo ng desisyon.

## Vietnamese

Chú ý - Quyết định này ảnh hưởng đến trợ cấp thất nghiệp của quý vị. Nếu quý vị không hiểu quyết định này, hãy liên lạc với Ban Kháng Cáo Việc Làm ngay lập tức. Nếu quý vị không đồng ý với quyết định này, quý vị có thể nộp Đơn Xin Tái Xét Tư Pháp với Tòa Kháng Cáo Oregon theo các hướng dẫn được viết ra ở cuối quyết định này.

## Spanish

Atención – Esta decisión afecta sus beneficios de desempleo. Si no entiende esta decisión, comuníquese inmediatamente con la Junta de Apelaciones de Asuntos Laborales. Si no está de acuerdo con esta decisión, puede presentar una Petición de Revisión Judicial ante el Tribunal de Apelaciones de Oregon siguiendo las instrucciones escritas al final de la decisión.

## Russian

Внимание – Данное решение влияет на ваше пособие по безработице. Если решение Вам непонятно – немедленно обратитесь в Апелляционный Комитет по Трудоустройству. Если Вы не согласны с принятым решением, вы можете подать Ходатайство о Пересмотре Судебного Решения в Апелляционный Суд штата Орегон, следуя инструкциям, описанным в конце решения.

**Khmer**

ចំណុចសំខាន់ – សេចក្តីសម្រេចនេះមានផលប៉ះពាល់ដល់អត្ថប្រយោជន៍គ្មានការងារធ្វើរបស់លោកអ្នក។ ប្រសិនបើលោកអ្នកមិនយល់អំពីសេចក្តីសម្រេចនេះ សូមទាក់ទងគណៈកម្មការឧទ្ធរណ៍ការងារភ្លាមៗ។ ប្រសិនបើលោកអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រេចនេះទេ លោកអ្នកអាចដាក់ពាក្យប្តឹងសុំឲ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

**Laotian**

ເອົາໃຈໃສ່ – ຄຳຕັດສິນນີ້ມີຜົນກະທົບຕໍ່ກັບເງິນຊ່ວຍເຫຼືອການຫວ່າງງານຂອງທ່ານ. ຖ້າທ່ານບໍ່ເຂົ້າໃຈຄຳຕັດສິນນີ້, ກະລຸນາຕິດຕໍ່ຫາຄະນະກຳມະການອຸທອນການຈ້າງງານໃນທັນທີ. ຖ້າທ່ານບໍ່ເຫັນດີນຳຄຳຕັດສິນນີ້, ທ່ານສາມາດຍື່ນຄຳຮ້ອງຂໍການທົບທວນຄຳຕັດສິນນຳສານອຸທອນລັດ Oregon ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

**Arabic**

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**Farsi**

توجه - این حکم بر مزایای بیکاری شما تاثیر می گذارد. اگر با این تصمیم موافق نیستید، بلافاصله با هیأت فرجام خواهی استخدام تماس بگیرید. اگر از این حکم رضایت ندارید، می‌توانید با استفاده از دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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