

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0419-R**

*Modified on Reconsideration*  
*Request for Hearing Allowed*  
*Request for Adjustment of Claim Determination Allowed*

**PROCEDURAL HISTORY:** On May 10, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision denying claimant's request for adjustment of claim determination under ORS 657.060. On May 19, 2017, claimant filed a timely request for hearing on the May 10, 2017 decision. On January 24, 2019, the Department referred claimant's request for hearing to the Office of Administrative Hearings (OAH).<sup>1</sup> On January 28, 2019, ALJ Kangas issued Order No. 19-UI-123525, erroneously dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by February 11, 2019. On February 11, 2019, claimant responded to the questionnaire. OAH considered claimant's response, and on February 12, 2019 mailed a letter stating that Order No. 19-UI-123525 was canceled and a hearing would be scheduled to address the timeliness of claimant's hearing request and, if appropriate, the merits of the May 10, 2017 decision. On April 2, 2019, ALJ M. Davis conducted a hearing, and on April 5, 2019 issued Order No. 19-UI-127693, concluding that claimant filed a timely request for hearing and affirming the Department's denial of claimant's request for an adjustment of claim determination. On April 25, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

On May 29, 2019, EAB issued Employment Appeals Board Decision 2019-EAB-0419, affirming Order No. 19-UI-127693.<sup>2</sup> On June 28, 2019, claimant filed a petition for judicial review with the Oregon Court of Appeals. On August 25, 2020, claimant filed an opening brief with the Court of Appeals. On January 11, 2021, the Department filed a motion for an extension of time to file its answering brief. On January 12, 2021, the Court of Appeals granted the motion. On February 16, 2021, the Department filed a notice of withdrawal of order for purposes of reconsideration pursuant to ORS 183.482 and ORAP 4.35. EAB did not consider any material beyond the hearing record in reaching this decision.

<sup>1</sup> The record does not show why the Department waited more than one and a half years to refer this matter for a hearing.

<sup>2</sup> EAB did not consider claimant's written argument when reaching Appeals Board Decision 2019-EAB-0419, or this decision, because she did not include a statement declaring that she provided a copy of her argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019).

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the portion of the order under review allowing claimant's request for hearing on the Department's denial of claimant's request for adjustment of claim determination is **adopted**. The remainder of this decision addresses whether claimant's request for adjustment of claim determination should be allowed.

**FINDINGS OF FACT:** (1) Home Care Workers employed claimant during the first, second, third and fourth quarters of 2016 as a personal support worker for her husband. Claimant performed no other work during 2016.

(2) On April 12, 2017, claimant filed an initial claim for unemployment insurance benefits, establishing a base year period of January 1, 2016 through December 31, 2016.

(3) The Department determined that claimant had no wages or hours of work during her base year period, and that she did not therefore have a valid claim for benefits. On April 21, 2017, the Department mailed a claim determination to claimant that did not include claimant's 2016 wages or hours from Home Care Workers.

(4) On May 8, 2017, claimant requested to have her wages from Home Care Workers added to her claim.

(5) On May 10, 2017, the Department served notice of a new determination denying claimant's request to add her wages from Home Care Workers to her claim.

**CONCLUSIONS AND REASONS:** On reconsideration, Order No. 19-UI-127693 is modified. Claimant's request for adjustment of claim determination is allowed to add the Home Care Workers wages to the claim.

ORS 657.150(2)(a) provides that to qualify for benefits an individual must have:

- (A) Worked in subject employment in the base year with total base year wages of \$1,000 or more and have total base year wages equal to or in excess of one and one-half times the wages in the highest quarter of the base year; and
- (B) Have earned wages in subject employment equal to six times the individual's weekly benefit amount in employment for service performed subsequent to the beginning of a preceding benefit year if benefits were paid to the individual for any week in the preceding benefit year.

ORS 657.150(2)(b) provides that if the individual does not meet the requirements of ORS 657.150(2)(a)(A), the individual may qualify for benefits if the individual has worked a minimum of 500 hours in employment subject to [chapter 657] during the base year. ORS 657.150(2)(a)(B).

ORS 657.060(1) states, in relevant part, that "employment" does not include service performed by a person in the employ of a spouse. However, ORS 410.619(2)(b) states that the state shall be deemed an employer of home care workers or personal support workers for the purpose of ORS chapter 657, except as provided in ORS 657.730(4).

Employment Appeals Board Decision 2019-EAB-0419 denied claimant's request to adjust her claim determination to add the Home Care Workers wages to the claim. The decision reasoned that claimant's service performed during the relevant base year was not "employment" under ORS 657.060(1) because it was service performed by claimant in the employ of her spouse. However, the record does not support the decision's conclusion because it overlooks ORS 410.619(2)(b).

ORS 410.619(2)(b) states that the state shall be deemed an employer of home care workers or personal support workers for the purpose of ORS chapter 657, except as provided in ORS 657.730(4). ORS 657.730(4) concerns workforce and labor market information, and is inapplicable to this case. Therefore, pursuant to ORS 410.619(2)(b), claimant's employer was the state, and not her spouse. Because claimant's service was performed in the employ of the state, and not of her spouse, the Home Care Workers wages should not be excluded, and claimant's request to add the Home Care Workers wages to her base year is allowed.

**DECISION:** Order No. 19-UI-127693 is set modified, as outlined above.

S. Alba and D. P. Hettle.

**DATE of Service: March 19, 2021**

**NOTE:** This decision on reconsideration will be filed with the Oregon Court of Appeals as required by ORS 183.482 and ORAP 4.35. 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

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## 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 desisyong ito.

## 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 Empleo. Si no está de acuerdo con esta decisión, puede presentar una Aplicación 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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