

**EMPLOYMENT APPEALS BOARD DECISION**  
**2020-EAB-0358**

*Modified*  
*Request for Adjustment of Claim Determination Allowed*

*Modificada*  
*La Aplicación Para Ajuste de la Determinación del Reclamo es Permitida*

**PROCEDURAL HISTORY:** On January 9, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision denying claimant's request for adjustment of claim determination and concluding his wages and hours of work from the employer could not be added to claimant's unemployment insurance benefits claim. On January 20, 2020, that decision became final without claimant having filed a timely request for hearing. On January 27, 2020, claimant filed a late request for hearing. On April 13, 2020, ALJ Wyatt conducted a hearing that was interpreted in Spanish, and at which the employer failed to appear. On April 21, 2020, the ALJ issued Order No. 20-UI-148493, concluding claimant showed good cause for his late request for hearing, but affirming the January 9, 2020 decision. On May 11, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

**HISTORIA PROCESAL:** El 9 de enero de 2020, el Departamento de Empleo de Oregon (el Departamento) envió notificación de una decisión administrativa negando la aplicación del reclamante para ajuste de la determinación del reclamo y concluyendo que sus sueldos y horas de trabajo del empleador no se podrían agregar a su reclamo de beneficios de desempleo. La decisión se convirtió definitiva el 20 de enero de 2020 sin que el reclamante hubiera presentado una aplicación oportuna para una audiencia. El 27 de enero de 2020, el reclamante sometió una aplicación tardía para una audiencia. El juez administrativo Wyatt llevó a cabo una audiencia el 13 de abril de 2020 que fue interpretada en español, y en la que el empleador no participó. El juez administrativo emitió la Orden

*No. 20-UI-148493 el 21 de abril de 2020, permitiendo la aplicación tardía del reclamante para una audiencia, pero concluyendo que la decisión del 9 de enero de 2020 permaneció intacta. El 11 de mayo de 2020, el reclamante presentó una aplicación de revisión de la orden judicial a La Junta de Apelaciones de Empleo (EAB).*

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 late request for hearing is **adopted**. The remainder of this decision addresses claimant's request for adjustment of claim determination.

*Basado en una revisión nueva y completa del expediente en este caso, y de acuerdo con ORS 657.275(2), las apreciaciones de los hechos y el análisis del juez administrativo con respeto a la conclusión que la petición tardía para una audiencia es permitida son **adoptados**. El resto de esta decisión se dirigirá a la aplicación del reclamante para ajuste de horas de trabajo del empleador para agregar a su reclamo de beneficios de desempleo.*

**FINDINGS OF FACT:** (1) Tobin McBride had employed claimant seasonally at its ranch in Oregon for approximately six months every year for fifteen years, including during 2018 and 2019. Claimant earned \$18,000 to \$20,114 in gross wages from the employer each year. Exhibit 1. Claimant worked in tending and harvesting alfalfa and corn crops for the employer's 1,200 range cattle and 60 dairy cows, and performed general maintenance at the employer's farm.

(2) During the six months he worked for the employer in 2019, claimant earned gross wages of \$21,114 from the employer. Exhibit 1. The employer employed multiple individuals to perform agricultural labor during the year. During the "cattle season" in 2018 and 2019, the employer sometimes had ten individuals working at the same time. Transcript at 17.

(3) On December 20, 2019, claimant opened an unemployment insurance benefits claim in California. Claimant filed an interstate request for an adjustment of his claim determination so that his California claim would include wages and hours from the employer.

(4) The Department determined claimant's base year to be July 1, 2018 through June 30, 2019. Claimant submitted proof of earnings to the Department including a 2019 paystub from the employer showing gross wages of \$21,114, and a W-2 form for 2018.<sup>1</sup> A representative from the Department's tax section reviewed information provided to it by the employer. The employer "self-reported" to the Department the wages the employer allegedly paid during 2018 and 2019. Transcript at 20-21. The Department did not audit or investigate the accuracy of the information provided by the employer. During March and April 2020, the Department was not conducting audits and field visits due to COVID-19.

**CONCLUSION AND REASONS:** Claimant's request for adjustment of his claim determination to include wages and hours from the employer is allowed. *La aplicación del reclamante para ajuste de su determinación del reclamo para agregar sus sueldos y horas de trabajo del empleador es permitida.*

ORS 657.150(1) states that an eligible individual shall be paid benefits in an amount that is determined by taking into account the individual's work in subject employment during the base year. ORS

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<sup>1</sup> Neither the record herein nor Employment Department records show the earnings claimant reported on his 2018 W-2.

657.045(1) provides that “employment” does not include agricultural labor unless the claimant performs work for an employer who meets one of the following conditions:

- (a) During any calendar quarter in the current calendar year or the preceding calendar year paid remuneration in cash of \$20,000 or more to individuals employed in agricultural labor; or
- (b) On each of 20 days during the current calendar year or the preceding calendar year, each day being in a different calendar week, employed in agricultural labor for some portion of the day (whether or not at the same moment of time) 10 or more individuals.

At issue was whether claimant’s wages from the employer during the applicable base year should be included for purposes of determining the amount of benefits claimant should receive in his California unemployment insurance benefits claim. The Department’s witness who investigated claimant’s request to add wages from the employer testified that the Department “looked at” the Oregon Quarterly Report that the employer submitted for 2018 and 2019, and in reviewing the employer’s information for all four quarters from both years, determined that claimant’s wages were excluded because the employer was an agricultural employer with a payroll less than \$20,000 per quarter, and was therefore not subject to Oregon Employment Department law. *See* ORS 657.045; Transcript at 11-12. The Department witness did not assert whether its information showed if the employer also met the condition set forth in ORS 657.045(1)(b) regarding the number of individuals the employer employed in agricultural labor during 2018 or 2019. The Department did not investigate the information “self-reported” by the employer, asserting that it did not do so because it had “no leads” regarding the employer’s account. Transcript at 21.

Order No. 20-UI-148493 denied claimant’s request for adjustment of his claim determination, reasoning that although claimant’s documentation “raises substantial questions” about the information the employer provided to the Department, there was insufficient proof to “overturn” the tax section’s determination that claimant’s wages from the employer during the base year were excluded from his claim.<sup>2</sup> However, the record does not support the order.

It was not disputed that claimant worked in agricultural labor, as defined by ORS 657.045(3). However, claimant testified that he alone earned over \$21,000 from the employer during 2019, and that the employer sometimes employed ten individuals at once during 2018 and 2019. The Department did not provide documentary evidence of the information it received from the employer, and even had it done so, the employer’s self-reports were hearsay because the employer did not appear for the hearing. Based on the thin information provided by the Department at hearing, compared to claimant’s firsthand evidence of his earnings and the employer’s hiring patterns, it is more likely than not that claimant’s employment for the employer during the base year was not exempt agricultural labor under ORS 657.045. Moreover, although the Department may not have been conducting audits or work site investigations due to COVID-19, that does not make the hearsay evidence from the employer more reliable than claimant’s firsthand testimony, nor should it increase claimant’s burden to show his work for the employer was subject employment. Accordingly, claimant’s request for adjustment of his claim determination shall be allowed so that it includes wages from the employer during claimant’s base year.

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<sup>2</sup> Order No. 20-UI-148493 at 4.

**DECISION:** Order No. 20-UI-148493 is modified, as outlined above. *La Orden de la Audiencia 20-UI-148493 se modifica, de acuerdo a lo indicado arriba.*

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

**DATE of Service: June 18, 2020**

**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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*NOTA: Usted puede apelar esta decisión presentando una solicitud de revisión judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) dentro de los 30 días siguientes a la fecha de notificación indicada arriba. Vea ORS 657.282. Para obtener formularios e información, puede escribir a la Corte de Apelaciones de Oregon, Sección de Registros (Oregon Court of Appeals/Records Section), 1163 State Street, Salem, Oregon 97310 o visite el sitio web en [courts.oregon.gov](http://courts.oregon.gov). En este sitio web, hay información disponible en español.*

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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 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 ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

**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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