

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0478

Affirmed
Base Year Extension Not Allowed

PROCEDURAL HISTORY: On April 7, 2020, 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 June 8, 2020, ALJ Murdock conducted a hearing, and on June 9, 2020, issued Order No. 20-UI-150844, affirming the Department's decision. On June 22, 2020, 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 hearing record.

FINDINGS OF FACT: (1) On November 16, 2017, claimant was injured at work. His injury was determined to be a disabling injury by his employer's workers' compensation insurance carrier.

(2) From November 22, 2017 through December 18, 2017, claimant was paid worker's compensation benefits under temporary *total* disability. Claimant received no other worker's compensation benefits under temporary total disability before he received notice that his claim closed on December 30, 2019.

(3) After December 18, 2017, claimant was paid worker's compensation benefits under temporary *partial* disability.

(4) Claimant was not able to work due to his November 17, 2017 work-related injury from November 17, 2017 until his doctor released him to work on August 15, 2019.

(5) Claimant was not able to work from October 1, 2018 through September 30, 2019 due to a heart condition. The heart condition was not a work-related injury.

(6) On December 30, 2019, claimant's worker's compensation claim closed.

(7) On March 23, 2020, claimant filed an initial claim for unemployment insurance benefits that was effective March 15, 2020. The base year for the claim was October 1, 2018 through September 30, 2019.

The Department determined that the claim was not valid because no employers reported wages during any of claimant's base year quarters. Claimant requested that the Department extend his base year.

CONCLUSIONS AND REASONS: Claimant's request for a base year extension is not allowed under ORS 657.170(2).

Claimant filed a claim for unemployment insurance benefits that was effective March 15, 2020. Because the Department determined that claimant did not have a valid claim based upon his base year wages, claimant requested that the Department extend his base year. ORS 657.170(2) provides that an individual's base year may be extended under the following circumstances:

(2) If the [Department] finds that *during and prior* to the individual's base year the individual has had a period of temporary *total* disability caused by illness or injury *and* has received compensation under ORS chapter 656 [Oregon Workers' Compensation laws] for a period of temporary *total* disability during *the greater part of any calendar quarter*, the individual's base year shall be extended as many calendar quarters as necessary to establish a valid claim, up to a maximum of four calendar quarters prior to the quarter in which the illness or injury occurred, if the individual:

(a) Files a claim for benefits not later than the fourth calendar week of unemployment following whichever is the latest of the following dates:

(A) The date the individual is released to return to work by the attending physician, as defined in ORS chapter 656, or a nurse practitioner authorized to provide compensable medical services under ORS 656.245 (Medical services to be provided); or

(B) The date of mailing of a notice of claim closure pursuant to ORS chapter 656; and

(b) Files such a claim within the three-year period immediately following the commencement of such period of illness or injury.

(Italics added for emphasis.)

The base year for claimant's claim was October 1, 2018 through September 30, 2019. The relevant quarters for assessing the applicability of ORS 657.170(2) are October 1 through December 31, 2018 (first quarter), January 1 through March 31, 2019 (second quarter), April 1 through June 30, 2019 (third quarter), and July 1 through September 30, 2019 (fourth quarter).

Claimant does meet one of the requirements of ORS 657.170(2), that he filed his unemployment benefit claim within three years of his worker's compensation injury. His injury occurred on November 16, 2017, and claimant filed his unemployment benefits claim before November 16, 2020. However, claimant must satisfy all the requirements of ORS 657.170(2) to be granted the base year extension, and, for the reasons that follow, claimant did not satisfy the other requirements.

To qualify for a base year extension, ORS 657.170(2) requires claimant to have had a period of temporary *total* disability caused by illness or injury *and* have received worker's compensation benefits

under temporary *total* disability during and prior to the greater part of any calendar quarter of the base year initially established by the Department. Claimant had a period of temporary total disability caused by illness or injury, but the only period during which claimant was also paid worker's compensation benefits under temporary *total* disability was from November 22, 2017 through December 18, 2017. Claimant received worker's compensation benefits during other quarters, however, those payments were temporary *partial* disability payments and do not satisfy the requirements of ORS 657.170(2). The 27-day period that claimant received total disability payments does not comprise the greater part of that quarter. Therefore, claimant did not receive total disability payments for the greater part of any quarter prior to when his base year started on October 1, 2018, or during his base year. Claimant testified that he was unable to work from November 17, 2017 through September 2019 due to his November 16, 2017 work-related injury and a subsequent heart condition that was not work-related. Transcript at 30. However, although claimant was not able to work, the dispositive issue for purposes of ORS 657.170(2) was whether claimant received worker's compensation benefits under *total* disability for the greater part of any quarter both prior to, and during, his base year beginning on October 1, 2018. Claimant only received *total* disability payments from November 22, 2017 through December 18, 2017, which was not the greater part of any quarter, and was not during his base year.

To qualify for a base year extension, ORS 657.170(2) also requires that claimant have filed his initial claim for benefits not later than the fourth calendar week of unemployment after the latter of either when his attending physician released him to work, or the date of the notice that claimant's worker's compensation claim closed. The latter of those two dates was December 30, 2019. Claimant filed his unemployment benefit claim effective March 15, 2020, which was more than four calendar weeks after December 30, 2019. Claimant does not qualify for a base year extension for this reason as well.

Claimant did not meet the requirements of ORS 657.170(2) and his request for a base year extension is not allowed.

DECISION: Order No. 20-UI-150844 is affirmed.

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

DATE of Service: July 24, 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. 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 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

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فوراً، و إذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للمراجعة القانونية بمحكمة الاستئناف بأوريغون و ذلك بإتباع الإرشادات المدرجة أسفل القرار.

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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