

**EMPLOYMENT APPEALS BOARD DECISION**  
**2020-EAB-0602**

*Affirmed*  
*Request for Adjustment of Claim Determination Denied*

**PROCEDURAL HISTORY:** On June 8, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision denying claimant's "Request for Adjustment of Claim Determination" (June 8, 2020 administrative decision). Claimant filed a timely request for hearing. On July 9, 2020, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for July 22, 2020 at 8:15 a.m. to determine whether claimant's claim determination reflected all of the wages and hours worked by claimant in subject employment during his base year. On July 22, 2020, claimant failed to appear for the hearing, and ALJ Snyder issued Order No. 20-UI-152416, dismissing claimant's request for hearing for failing to appear.

On July 28, 2020, claimant filed a timely request to reopen the July 22, 2020 hearing. On August 4, 2020, OAH mailed notice of a hearing scheduled for August 14, 2020 to determine whether claimant had good cause to reopen the July 22, 2020 hearing, and if so, the merits of the June 8, 2020 administrative decision. On August 14, 2020, ALJ Wyatt conducted a hearing, at which the employer failed to appear, and on August 21, 2020, issued Order No. 20-UI-153260 allowing claimant's request to reopen, but affirming the June 8, 2020 administrative decision. On September 3, 2020, claimant filed a timely application for review of Order No. 20-UI-153260 with the Employment Appeals Board (EAB).

With their application for review, claimant submitted a written argument. Claimant did not declare that they provided a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented them from offering the information during the hearing as required by OAR 471-041-0090. EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

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 concluding that claimant established good cause for failing to appear at the July 22, 2020 hearing and allowing claimant's request to reopen is **adopted**. The remainder of this

decision will address the merits of the June 8, 2020 administrative decision denying claimant's Request for Adjustment of Claim Determination.

**FINDINGS OF FACT:** (1) During 2019, American Airlines, Inc. employed claimant as a member of its air travel personnel. Claimant did not engage in any other employment during 2019.

(2) On or about April 2, 2020, during the second quarter of 2020, claimant filed an initial claim for unemployment insurance benefits. An initial claim filed during that quarter has a base year of January 1, 2019 through December 31, 2019. The Department determined that claimant's claim was not monetarily valid because no employer had reported any Oregon wages paid to claimant during claimant's base year.

(3) On or about June 2, 2020, claimant submitted a "Request for Adjustment of Claim Determination." Record, June 8, 2020 administrative decision. The Department's UI Tax Division investigated claimant's request by contacting the employer. The employer notified the Department that in performing his work, claimant started and stopped his workdays in Los Angeles, CA, that the direction and control of his work came from Los Angeles, CA, and that his base of operations was in Los Angeles, CA. From that information, the Department concluded that claimant's wages from the employer during claimant's base year were not reportable to Oregon, but to the state of California.

(4) Beginning in June 2020, claimant filed claims for benefits with the relevant California unemployment agency and thereafter received benefits, effective the week beginning June 7, 2020.<sup>1</sup>

**CONCLUSIONS AND REASONS:** Claimant's Request for Adjustment of Claim Determination to include the wages he received from the employer during his base year is denied.

As a preliminary matter, because the Department denied claimant benefits by concluding that he did not have a monetarily valid claim, claimant has the burden to prove that base year earnings from his employment in California should have been added to his Oregon claim for unemployment insurance benefits. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976) (where the Department has paid benefits it has the burden to prove benefits should not have been paid; by logical extension of that principal, where benefits have not been paid claimant has the burden to prove that the Department should have paid benefits).

ORS 657.266 requires the Department to promptly examine each new claim for benefits, determine the wages paid to claimant during the applicable base year, determine if those wages are sufficient to qualify claimant for benefits and, if so, determine the weekly benefit amount payable to claimant. ORS 657.150(1) provides that an eligible individual shall be paid benefits in an amount determined by taking into account the individual's work in subject employment during the base year.

"Employment," for purposes of unemployment insurance, is defined in ORS 657.035. ORS 657.035 provides, in relevant part, as follows:

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<sup>1</sup> At hearing, claimant asserted that although he had received benefits under the California unemployment insurance law, effective the week beginning June 7, 2020, he had not yet received benefits for the five weeks between his May 2, 2020 layoff date and June 6, 2020, the weeks including May 3 through June 6, 2020 (weeks 19-20 through 23-20). Audio Record at 21:00 to 23:15. For the reasons explained in this decision, he does not have a valid claim in Oregon for those weeks, which, if payable, would be paid under California unemployment insurance law. Audio Record at 23:15 to 25:15.

- (1) The term “employment” includes an individual’s entire service, performed within, or both within and without, this state if:
  - (a) The service is localized in this state; or
  - (b) The service is not localized in any state, and such service is not covered under the unemployment compensation law of any other state, the Virgin Islands or Canada, and
    - (A) The base of operations is in this state, or if there is no base of operations, then the place from which the service is directed or controlled is in this state...

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In this case, claimant’s position is that the Department should adjust its claim determination by adding base year earnings from his employment in California to his Oregon claim for unemployment insurance benefits, thus allowing him to establish a valid Oregon claim. Under Oregon law restated above, however, claimant’s base year earnings from California cannot fund a valid claim in this state.

It was undisputed that claimant’s workdays for the employer in air travel started and stopped in Los Angeles, CA. For that reason, more likely than not, claimant’s work for the employer was not localized in Oregon. It also was undisputed that the employer considered claimant’s base of operations to be in Los Angeles, CA and that it was from that location that the employer directed and controlled claimant’s work. Claimant also did not dispute that after the Department denied his Oregon claim for unemployment insurance benefits, he filed claims for and received at least some of the benefits he claimed under California’s unemployment compensation law. Accordingly, under ORS 657.035(1)(a) and (b), claimant did not engage in “employment” in Oregon during his 2019 base year, and for that reason his wages from the employer were not reportable to Oregon to be included within his base year wages.

For the foregoing reasons, claimant failed to meet his burden to show that base year earnings from his employment in California should have been added to his Oregon claim for unemployment insurance benefits. For that reason, claimant’s “Request for Adjustment of Claim Determination” is denied.

**DECISION:** Order No. 20-UI-153260 is affirmed.

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

**DATE of Service:** September 28, 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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# 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 الإستئناف 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.

**Employment Appeals Board - 875 Union Street NE | Salem, OR 97311**  
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