

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0652

Affirmed
Late Request for Hearing Allowed
Valid BYE 10-21 Claim, Claim Cancellation Denied

PROCEDURAL HISTORY: On March 23, 2020, the Oregon Employment Department (the Department) served notice of wage and potential benefit report concluding that claimant had a valid claim for benefits, with a weekly benefit amount of \$151 and a maximum benefit amount of \$3,722. On April 2, 2020, the report became final without claimant having filed a timely request for hearing. On April 4, 2020, claimant filed a late request for hearing by email. On August 21, 2020, claimant re-requested a hearing. On September 1, 2020, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for September 15, 2020. On September 15, 2020, ALJ Frank conducted a hearing, and on September 18, 2020 issued Order No. 2020-UI-154140, allowing claimant's late request for hearing and affirming the Department's March 23, 2020 wage and potential benefit report. On October 5, 2020, claimant filed a timely application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision.

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**.

FINDINGS OF FACT: (1) On March 15, 2020, claimant filed an initial claim for unemployment insurance benefits.

(2) On March 23, 2020, the Department issued the wage and potential benefit report. The wage and potential benefit report found that claimant's claim for benefit year ending week 10-21 was valid. Claimant's weekly benefit amount was \$151 and the maximum benefit amount of the claim was \$3,722.

(3) Claimant agreed with the base year wages and hours the Department used in the wage and potential benefit report, but he was concerned about the low amounts of his weekly and maximum benefit amounts. Claimant learned that if he had waited until April to file his claim, the claim would be based upon more wages and he would have higher weekly and maximum benefit amounts.

(4) On April 4, 2020, claimant sent an email to the Department that was later construed as a request for hearing on the wage and potential benefit report. Claimant's email stated, among other things, "Am I able to cancel my claim . . . and file an entirely new claim now . . .? [] I would just like to know what my options are if I have any * * * [o]r perhaps, can and should I cancel my claim and refile? In the meantime, I will continue to claim my weekly benefit until advised differently." Exhibit 2.

(5) Claimant did not receive a response to his April 4th email, and the email was not processed as a request for hearing until September 2020.

(6) Effective April 6th, the Department paid benefits to claimant.¹

CONCLUSIONS AND REASONS: Claimant has a valid claim with a benefit year ending week 10-21, and is not entitled to cancel that claim.

The Department determines the weekly and maximum benefit amounts associated with an unemployment insurance claim by examining each claimant's base year wages and hours of work. *See generally* ORS 657.150. The "base year" is defined as the first four of the last five completed calendar quarters. ORS 657.010(1).

There is no dispute in this case that the Department's March 23rd wage and potential benefit report correctly identified claimant's BYE 10-21 base year wages and hours, nor is there any dispute that the Department correctly calculated claimant's weekly and maximum benefit amounts based upon claimant's base year wages and hours. Absent any dispute, it appears more likely than not that the Department's March 23rd wage and potential benefit report was accurate.

Claimant's argument is, in effect, that he attempted to contact the Department to ask about canceling his claim, and he should have been allowed to cancel his BYE 10-21 claim and re-file in April 2020 to receive increased weekly and maximum benefit amounts. ORS 657.266(4) provides that the Department's "initial or amended determination may be canceled by the claimant at any time even though final, providing no disqualification has been assessed, no appeal of a disqualification or denial has been requested by the claimant nor benefits paid on such claim."

In this case, it appears that the Department paid benefits to claimant before claimant canceled his claim. Notably, claimant's April 4th email did not include a request to cancel the BYE 10-21 claim, but instead included a request for information or advice as to whether he could or should cancel his claim. Before claimant received a response or otherwise discussed the matter with the Department, or unambiguously requested to cancel his claim, the Department paid claimant a week of benefits on April 6th.

¹ EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is a screenshot of claimant's claim records showing the Department first paid benefits to claimant on April 6th. The screenshot has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the exhibit(s) will remain in the record.

Because the Department's March 23rd wage and potential benefit report correctly reflected claimant's base year wages and hours, the report is affirmed. Because the Department paid benefits to claimant before he filed or requested to cancel his BYE 10-21 claim, claimant is not entitled to have his BYE 10-21 claim canceled.

DECISION: Order No. 20-UI-154140 is affirmed.

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

DATE of Service: November 12, 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

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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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