

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0723

Affirmed
Base Year Extension Not Allowed

PROCEDURAL HISTORY: On August 17, 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 October 21, 2020, ALJ Frank conducted a hearing, and on October 29, 2020 issued Order No. 20-UI-155883, affirming the Department's decision. On November 18, 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) In May of 2017, claimant suffered a disabling work injury for which he filed a worker's compensation claim. Claimant received total disability benefits under his claim until approximately mid-August 2019. On August 23, 2019, claimant entered into a settlement agreement regarding his claim prior to, and in lieu of, the claim's closure. He did not return to work or immediately file a claim for unemployment insurance benefits because he still considered himself unable to work.

(2) On April 7, 2020, claimant filed an initial claim for unemployment insurance benefits. The Department established claimant's base year as January 1, 2019 through December 31, 2019. However, claimant had not worked since the first half of 2017. Due to a lack of work hours or reported wages in claimant's base year, the Department determined his claim to be monetarily non-valid, with no weekly benefit amount.

(3) Because claimant was disabled during 2019, claimant requested that the Department extend his base year to include 2018 and part or all of 2017. The Department granted claimant's request to extend his base year to include 2018. However, due to a lack of work hours or reported wages in 2018, claimant's claim remained monetarily non-valid, with no weekly benefit amount. The Department denied claimant's request to extend his base year to include any part of 2017.

(4) Claimant's attending physician never released claimant to return to work.

CONCLUSIONS AND REASONS: Claimant's request for a base year extension to include all or part of 2017 is not allowed under ORS 657.170(2).

Claimant filed a claim for unemployment insurance benefits on April 7, 2020. Because the Department determined that claimant did not have a monetarily valid claim based upon the lack of base year work hours and wages, claimant requested that the Department extend his base year to include 2017, which the Department denied under ORS 657.170(2).

ORS 657.170(2) provides:

(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.

Here, for claimant to qualify for a base year extension to include 2017, he had the burden to show that he met the requirements of ORS 657.170(2)(a) and (b). Claimant failed to meet that burden.

The record shows that claimant met the requirements of ORS 657.170 (2)(b). During and prior to claimant's base year, claimant had a period of temporary total disability caused by a work injury, received compensation under ORS chapter 656 [Oregon Workers' Compensation laws] for that temporary total disability from July 2017 through August 2019, and claimant's April 7, 2020 claim for benefits was filed within the three year period immediately following his injury in May 2017.

However, the record fails to show that claimant met the requirements of ORS 657.170 (2)(a). To meet the requirements of that section, claimant was required to have filed his claim for benefits no later than four calendar weeks after the mailing date of his workers' compensation claim's notice of closure, or the

date he was released to return to work by his physician, whichever was later. Claimant settled his workers' compensation claim prior to, and in lieu of, that claim's closure, on August 23, 2019, approximately eight months prior to the date claimant filed his claim for unemployment insurance benefits. Accordingly, because claimant did not file his claim for benefits within four calendar weeks of his settlement date, the requirement set forth in ORS 657.170 (2)(a)(B) was not met. When asked at hearing, "Were you released for work at some point?" claimant responded, "No." Audio Record at 16:50 to 17:15. Accordingly, because claimant was never released to return to work, he did not file his claim for benefits within the four calendar weeks "following" the date of such a release. For that reason, the requirement set forth in ORS 657.170 (2)(a)(A) was not met.

In written argument, claimant reasserted that he never received a work release from his physician, and for that reason requested that the relevant requirement of ORS 657.170(2)(a) be waived in this case and a further base year extension be granted. Written Argument at 2. However, EAB has no authority or jurisdiction to grant such a waiver.

Claimant failed to meet his burden to establish that he is entitled to a further base year extension under ORS 657.170(2). For that reason, claimant's request for an extension to include 2017 is denied.

DECISION: Order No. 20-UI-155883 is affirmed.

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

DATE of Service: December 17, 2020

NOTE: This decision denies a potential payment of Unemployment Insurance (UI) benefits.

However, you may be eligible for Pandemic Unemployment Assistance (PUA) benefits for the period you are not eligible for other benefits as long as you are unable to work, unavailable for work, or unemployed due to the COVID-19 public health emergency. PUA is a new unemployment benefits program available through the Oregon Employment Department in response to the COVID-19 pandemic.

Visit <https://unemployment.oregon.gov> for more information, to apply for PUA, or to contact the Oregon Employment Department using the "Contact Us" form. You can also apply for PUA by calling 1-833-410-1004, but please be aware that the PUA staff cannot answer questions about this decision that denies payment of regular Unemployment Insurance (UI) benefits.

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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymoz.com/s3/5552642/EAB-Customer-Service-Survey>. You can access the survey using a computer, tablet, or smartphone. If you are unable to complete the survey online and need a paper copy of the survey, please contact our office.



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.

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