

EMPLOYMENT APPEALS BOARD DECISION
2020-EAB-0759

Affirmed
Disqualification

PROCEDURAL HISTORY: On July 9, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was receiving retirement pay that would reduce her weekly benefit amount from March 29, 2020 through July 4, 2020 and until the reason for the reduction in benefits had ended (decision # 80634). Claimant filed a timely request for hearing. On November 23, 2020, the Department issued an amended administrative decision concluding that claimant was receiving retirement pay in an amount greater than or equal to her weekly benefit amount, and that she was disqualified from receiving benefits from March 29, 2020 through November 21, 2020 and until the reason for the denial ended (decision # 164650). On November 30, 2020, ALJ Davis conducted a hearing¹ and issued Order No. 20-UI-157003, modifying decision # 164650 to conclude that claimant was receiving retirement pay in an amount greater than or equal to her weekly benefit amount, and that she was disqualified from receiving benefits from March 29, 2020 through November 28, 2020. On December 6, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

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

FINDINGS OF FACT: (1) Prior to April 2020, claimant worked for Multnomah County School District #1 (the employer) as a substitute teacher until she was laid off due to the COVID-19 pandemic.

(2) On April 2, 2020, claimant filed an initial claim for unemployment insurance benefits, which established a base year of January 1, 2019 through December 31, 2019 and a weekly benefit amount (WBA) of \$134.00 per week.

(3) Claimant claimed weekly benefits each week from March 29, 2020 through November 28, 2020, the weeks at issue. During the weeks at issue, claimant received \$3,352.00 per month from a PERS

¹ Although claimant did not file a request for hearing on decision # 164650, at hearing the parties agreed to allow the ALJ to take jurisdiction over all weeks that claimant had claimed and been denied.

retirement pension. The pension was maintained by or contributed to by the employer, which is a base year employer. Claimant's pension payments were \$773.54 per week when prorated on a weekly basis.

CONCLUSIONS AND REASONS: Claimant is disqualified from receiving unemployment insurance benefits from March 29, 2020 through November 28, 2020.

ORS 657.205(1) provides that “. . . an individual is disqualified for benefits for any week with respect to which the individual is receiving, will receive, or has received a governmental or other pension, retirement or retired pay, annuity, or other similar periodic payment based on the previous work of the individual, if payment is received under a plan maintained or contributed to by a base year employer of the individual. ORS 657.205(5) provides, “If under this section the remuneration and payments, or the pro rata share thereof, in any week are less than the benefits which would otherwise be due under this chapter for such week, such individual is entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration and payments.”

In other words, if during a week in which they have claimed benefits, a claimant has received pension payments from a plan maintained by or contributed to by an employer in the base year used to establish their claim, and if those payments equal or exceed the claimant's WBA, the claimant is disqualified from benefits for that week. Both claimant and the Department's witness testified that claimant received payments that exceeded claimant's WBA during the weeks at issue, and that those payments were paid by a fund (PERS) to which the employer contributed.

In her written argument, claimant correctly identified an exception to this type of disqualification:

* * *

(3) An individual is not disqualified for benefits and the director may not reduce benefits under this section to an individual who:

- (a) If otherwise eligible, is entitled to benefits for any week;
- (b) Is a dislocated worker who has been terminated as a result of any permanent closure of or any substantial layoff at a plant, facility or enterprise; **and**
- (c) Elects to receive a payment referred to in subsection (1) of this section in a lump sum.

* * *

ORS 657.205(3) (emphasis added).

In order to qualify for this exception, however, claimant must meet all three requirements under subsection (3) of ORS 657.205(3). Claimant did not testify that she had elected to receive her PERS payments in a lump sum, and the record shows that claimant received regular periodic payments from PERS. It is not necessary to determine if claimant was a “dislocated worker” because claimant to meet the exception, claimant must meet all three requirements, and claimant does not meet the lump-sum

requirement. The record therefore shows that ORS 657.205(3) does not apply to claimant's circumstances, and she is disqualified from the receipt of benefits due to her periodic pension payments.

DECISION: Order No. 20-UI-157003 is affirmed.

S. Alba and D. P. Hettle.

DATE of Service: January 8, 2021

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.

NOTE: This decision denies payment of your 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.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 desisyong ito.

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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
www.Oregon.gov/Employ/eab

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