

**EMPLOYMENT APPEALS BOARD DECISION**  
**2020-EAB-0802**

*Order No. 20-UI-157650 Affirmed*  
*Amendment of Claim Determination Unchanged*

**PROCEDURAL HISTORY:** On October 26, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision allowing claimant's request to adjust the determination on his claim and adding \$9,545.67 in base year wages and 414 base year hours of work. Claimant filed a timely request for hearing. On November 10, 2020 the Department issued another administrative decision, allowing claimant's request to adjust the determination on his claim and adding \$847.32 in base year wages and 34 base year hours of work.<sup>1</sup> On December 11, 2020, ALJ Janzen conducted a hearing, and on December 15, 2020 issued Order No. 20-UI-157650, amending the October 26, 2020 administrative decision to add \$1,094.10 in base year wages and 44 base year hours of work, including the wages and hours already added by the November 10, 2020 administrative decision. On December 23, 2020, claimant filed an application for review of Order No. 20-UI-157650 with the Employment Appeals Board (EAB). Also on December 23, 2020, the Department issued another administrative decision, adding \$246.78 in base year wages and 20 hours in base year hours to the claim.

**WRITTEN ARGUMENT:** EAB considered claimant's three written arguments, filed on December 23, 2020, December 29, 2020, and January 9, 2021, when reaching this decision.

**EVIDENTIARY MATTER:** EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence consists of a letter the Department sent to claimant, dated December 30, 2020, determining that claimant was an independent contractor for Anthony Travel Inc. The letter, which claimant attached to his written argument dated January 9, 2021, has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. EAB has considered this evidence because it was issued after the hearing, which was a circumstance beyond claimant's reasonable control that prevented him from offering it into evidence at the hearing. See ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019). Any party that objects to our admitting EAB Exhibit 1 must submit such objection to this office in writing, setting forth the basis of

<sup>1</sup> The Department also issued an administrative decision on December 4, 2020 which "supersede[d] by amend[ment]" the November 10, 2020 decision. However, aside from the date, the December 4, 2020 decision appears identical to the November 10, 2020 decision.

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 will remain in the record.

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), findings of fact 1 through 6 in Order No. 20-UI-157650 are **adopted**; the portions of the order under review concluding that \$246.78 of base year wages and 10 hours of base year work from Columbia Crossroads Inc., and \$847.32 of base year wages and 34 hours of base year work from Pacific Northwest Tourism, should be added to claimant's claim determination are also **adopted**. The remainder of this decision addresses claimant's remaining requests to modify his claim determination.

**ADDITIONAL FINDINGS OF FACT:** (1) On April 26, 2020, claimant filed an initial claim for benefits with a benefit year ending April 24, 2021 (BYE 16-21). On June 9, 2020, the Department issued an administrative decision determining that claimant did not have enough wages or hours in his base year to result in a valid claim for BYE 16-21. Claimant's September 27, 2020 initial claim resulted in a valid claim with a benefit year ending September 25, 2021 (BYE 38-21).<sup>2</sup>

(2) During the second quarter of 2019, claimant worked for Anthony Travel Inc., in what he understood to be an independent contractor relationship. During that time, Anthony Travel Inc. paid claimant \$4,183.50 for 75 hours of work, which was reported on a 1099-MISC form. On December 30, 2020, the Department issued a letter advising claimant that he had been properly classified as an independent contractor for Anthony Travel Inc., that his earnings with the company therefore were not subject wages, and would not be added to his claim determination.

(3) During the second through fourth quarters of 2019, claimant was paid a total of \$9,545.67 for 406.5 hours of work for Columbia Crossroads Inc. The Department determined that, for those three quarters, claimant worked a total of 414 hours for this employer. The Department allocated the \$9,545.67 equally across each of those three quarters because the employer had not submitted quarterly payroll reports to indicate what claimant was paid in each quarter. Transcript at 19. Based on his own records, claimant determined that his hours and earnings should be allocated as follows: \$2,784.80 for 118.5 hours during second quarter of 2019; \$3,831.92 for 163 hours during third quarter of 2019; and \$2,928.92 for 125 hours of work during fourth quarter of 2019.<sup>3</sup> Transcript at 36.

**CONCLUSIONS AND REASONS:** Claimant's claim determination should be adjusted to reflect the wages actually paid and the number of hours actually worked for Columbia Crossroads Inc. during the second, third, and fourth quarters of 2019.<sup>4</sup> Claimant's claim determination also should be adjusted to reflect the correct number of hours that claimant worked for Columbia Crossroads Inc. during the first quarter of 2020, as concluded in Order No. 20-UI-157650. Additional wages and hours from the Bureau of Census for the first quarter of 2020 should not be added to claimant's claim determination.

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<sup>2</sup> Unless otherwise noted, all discussion of wages and hours at issue in this decision relate to claim determinations for BYE 38-21.

<sup>3</sup> Claimant's testimony would indicate that his total wages for this employer over these three quarters were \$9,545.64; however, the 1099-MISC for this employer that claimant submitted shows that the Department correctly determined the total wages for these three quarters to be \$9,545.67. Exhibit 1 at 21.

<sup>4</sup> As discussed below, however, the wages from Columbia Crossroads Inc. that he sought to add to his claim determination have already been added in accordance with the order under review, as affirmed by this decision.

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.

**Columbia Crossroads Inc.** Following the issuance of the order under review, on December 23, 2020 the Department issued another administrative decision that largely implemented the wage and hour changes mandated by the order under review. For reasons not explained in the record, the Department added an additional 20 hours of work from Columbia Crossroads Inc. during the first quarter of 2020, rather than the 10 hours mandated by the order under review. The Department should correct this apparent error. Additionally, because claimant offered in his testimony a more accurate means to allocate his second, third, and fourth quarter 2019 wages and hours from Columbia Crossroads Inc., the Department should reallocate those wages and hours as closely as possible as indicated in Finding of Fact 3, above.

However, claimant should note that the \$9,545.67 from Columbia Crossroads Inc. that he sought to add to his claim determination have already been added in accordance with the order under review, as affirmed by this decision. The reallocation of wages from this employer across the same three base year quarters to which the wages were already added will not increase his weekly benefit amount for this claim, and will likely have no impact on the amount of benefits to which he may be eligible on any future claims.<sup>5</sup>

**Bureau of Census.** Claimant contended that he earned \$7,410.22 for 389.25 hours of work, rather than \$7,217.72 for 380 hours of work, for the Bureau of Census during the first quarter of 2020. Transcript at 30. However, claimant also testified that he based these figures on his paystub from that employer for the pay period of March 22, 2020 through March 28, 2020, which was paid to him on April 8, 2020. Transcript at 31. OAR 471-030-0010 (January 11, 2018) provides, "Wages shall be assigned to the calendar quarter in which they are paid, in the same manner that taxes are payable pursuant to OAR 471-031-0070(1)." Therefore, although claimant may have *earned* more than \$7,217.72 with the Bureau of Census during the first quarter of 2020, he has not shown by a preponderance of the evidence that he was *paid* more than that amount, and no additional wages or hours from this employer should be added to claimant's claim determination.

**Anthony Travel Inc.** The Department had not yet issued a determination of whether claimant was an employee of Anthony Travel Inc. at the time the order under review was issued. Therefore, the order review concluded only that "... the record was insufficient to establish that the income [from Anthony Travel Inc.] be added to claimant's claim determination." Order No. 20-UI-157650 at 3. The Department has since issued a letter stating its determination that claimant worked for Anthony Travel Inc. as an independent contractor, and that claimant's work for the company therefore was not in subject

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<sup>5</sup> One of the Department's witnesses confirmed that, "... because the total wages will still be the same for [the second, third, and fourth quarters of 2019]," claimant's weekly benefit amount will not be affected. Transcript at 20. The Department's other witness explained that the reallocation of wages described here "... would not have an effect on [claimant's] future unemployment insurance claims because those quarters are being used in the current claim, so because of that, they would not be used in a future claim." Transcript at 51.

employment. EAB Exhibit 1. The letter also advised claimant that if he wished to appeal the determination, a request for hearing must be directed to the Office of Administrative Hearings (OAH). EAB Exhibit 1. Because appellate jurisdiction over the determination that claimant was an independent contractor lies with OAH, EAB lacks jurisdiction over that issue.<sup>6</sup>

Claimant's claim determination should be adjusted to reflect the wages actually paid and the number of hours actually worked for Columbia Crossroads Inc. during the second, third, and fourth quarters of 2019.<sup>7</sup> Claimant's claim determination should be adjusted to reflect the correct number of hours that claimant worked for Columbia Crossroads Inc. during the first quarter of 2020, as concluded in Order No. 20-UI-157650. Additional wages and hours from the Bureau of Census for the first quarter of 2020 should not be added to claimant's claim determination.

**DECISION:** Order No. 20-UI-157650 is affirmed.

S. Alba and D. P. Hettle.

**DATE of Service: January 29, 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](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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<sup>6</sup> In his July 9, 2021 written argument, claimant also refers to a June 9, 2020 claim determination for claimant's benefit year ending April 24, 2021. That administrative decision stated that it became final unless redetermination or a hearing was sought within 10 days following the date it was mailed or delivered. Exhibit 1 at 42. While the record shows that claimant submitted a request for a redetermination and hearing on the June 9, 2020 administrative decision on June 13, 2020, this matter did not come before EAB as an appeal of a hearing on that particular issue. Exhibit 1 at 41. EAB therefore lacks jurisdiction over that issue.

<sup>7</sup> As discussed above, however, the wages from Columbia Crossroads Inc. that claimant sought to add to his claim determination have already been added in accordance with the order under review, as affirmed by this decision.



# 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 ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄໍາຕັດສິນນີ້.

**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**  
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711  
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