

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0451

Orders No. 21-UI-167218, 21-UI-167217 and 21-UI-167195 Affirmed
Disqualification (Weeks 25-20 through 36-20)
Benefit Reduction (Weeks 12-20 through 24-20 and 37-20 through 19-21)

PROCEDURAL HISTORY: On April 13, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant's retirement pay reduced her weekly benefit amount for each of the weeks including March 15, 2020 through June 13, 2020 (weeks 12-20 through 24-20) (decision # 110036). On April 13, 2021, the Department served notice of a second administrative decision concluding that claimant was receiving retirement pay that was more than or equal to her weekly benefit amount, disqualifying claimant from receiving unemployment insurance benefits for each of the weeks including June 14, 2020 through September 5, 2020 (weeks 25-20 through 36-20) (decision # 112022). On April 13, 2021, the Department served notice of a third administrative decision concluding that claimant's retirement pay reduced her weekly benefit amount for each of the weeks including September 6, 2020 through April 10, 2021 (weeks 37-20 through 14-21) and until the reason for the reduction had ended (decision # 113804). Claimant filed timely requests for hearing on decisions # 110036, # 112022, and # 113804. On May 18, 2021, ALJ S. Lee conducted a consolidated hearing on all three administrative decisions. On May 20, 2021, ALJ S. Lee issued Order No. 21-UI-167218 affirming decision # 110036; Order No. 21-UI-167217 affirming decision # 112022; and Order No. 21-UI-167195 modifying decision # 113804 by concluding that claimant's retirement pay reduced her weekly benefit amount for each of the weeks including September 6, 2020 through May 15, 2021 (weeks 37-20 through 19-21). On June 4, 2021, claimant filed applications for review of Orders No. 21-UI-167218, 21-UI-167217 and 21-UI-167195 with the Employment Appeals Board.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 21-UI-167218, 21-UI-167217 and 21-UI-167195. For case-tracking purposes, this decision is being issued in triplicate (EAB Decisions 2021-EAB-0451, 2021-EAB-0452 and 2021-EAB-0450).

FINDINGS OF FACT: (1) In 2010, claimant retired and began receiving retirement benefits from the Oregon Public Employees' Retirement System (PERS) based on her previous work with PERS employers. Claimant's weekly retirement pay amount was \$272.¹

(2) After retiring, claimant worked for several employers, including both educational and non-educational employers. From October 2018 through September 2019, several of claimant's educational employers contributed to PERS by contributing to the accounts of full-time employees who were eligible for employee benefits, but they did not contribute to claimant's individual PERS account because claimant was employed with them as a part-time employee who did not receive employee benefits.

(3) On March 19, 2020, claimant filed an initial claim for unemployment insurance benefits. The Department determined that claimant had a valid claim and that claimant's base year was October 1, 2018 through September 30, 2019. The Department also determined that claimant's base year employers included both educational and non-educational employers and that claimant's weekly benefit amount based on wages from those employers was \$317. The Department also determined that for the weeks including June 14, 2020 through September 5, 2020 (weeks 25-20 through 36-20), during the summer recess period of one of claimant's educational employers, claimant's monthly benefit amount was reduced to \$234 based only on the non-school portion of claimant's base year wages.

(4) Claimant filed weekly claims for benefits for each of the weeks including March 15, 2020 through May 15, 2021 (weeks 12-20 through 19-21), the weeks at issue. The Department paid claimant benefits for each of those weeks.

CONCLUSIONS AND REASONS: Claimant is disqualified from receiving benefits for the weeks including June 14, 2020 through September 5, 2020 (weeks 25-20 through 36-20) because she received retirement benefits that exceeded her weekly benefit amount for each of those weeks. Claimant's benefits are reduced for the weeks including March 15, 2020 through June 13, 2020, and September 6, 2020 through May 15, 2021 (weeks 12-20 through 24-20 and 37-20 through 19-21) by the amount of retirement pay she received during each of those weeks.

ORS 657.205(1) provides, "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." If "the remuneration and payments, or the pro rata share thereof, in any week are less than the benefits which would otherwise be due . . . 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." ORS 657.205(5).

The record shows that for each week at issue, claimant received retirement pay of \$272 from PERS. The record also shows that several of claimant's base year employers contributed to PERS. For these reasons, under ORS 657.205(1), the Department correctly disqualified claimant from receiving benefits

¹ Claimant received monthly retirement payments from PERS in the amount of \$1,176.67. Claimant's monthly retirement payments were converted to a weekly retirement payment amount according to a formula set forth by OAR 471-030-0020 (January 11, 2018). Applying that formula yielded the weekly retirement payment amount of \$272.

for the weeks including June 14, 2020 through September 5, 2020 (weeks 25-20 through 36-20) because claimant's weekly retirement pay of \$272 exceeded her weekly benefit amount of \$234 for each of those weeks. Under ORS 657.205(5), the Department also correctly reduced claimant's weekly benefit amount of \$317 for each of the weeks including March 15, 2020 through June 13, 2020, and September 6, 2020 through May 15, 2021 (weeks 12-20 through 24-20 and 37-20 through 19-21) by her weekly retirement pay of \$272 because her weekly retirement pay was less than her weekly benefit amount.

Claimant argued at hearing that because none of her base year employers contributed to her individual PERS account, her weekly benefit amount should not have been eliminated or reduced. Transcript at 17-18, 20-22. Although none of claimant's base year employers contributed to her individual PERS account, under the plain language of ORS 657.205, it is immaterial that the employers did not contribute to claimant's individual PERS account because the employers contributed to PERS on any employee's behalf.

DECISION: Orders No. 21-UI-167218, 21-UI-167217 and 21-UI-167195 are affirmed.

S. Alba and A. Steger-Bentz;
D. Hettle, not participating.

DATE of Service: July 13, 2021

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.

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 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 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 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.

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