

EMPLOYMENT APPEALS BOARD DECISION
2021-EAB-0773

Modified

PROCEDURAL HISTORY: On March 4, 2021, the Oregon Employment Department (the Department) served notice of a Wage and Potential Benefit Report (WPBR) concluding that claimant's weekly Pandemic Emergency Unemployment Compensation (PEUC) benefit amount was \$171 and her maximum benefit amount was \$1,881. Claimant filed a timely request for hearing. On April 8, 2021, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for April 22, 2021 at 1:30 p.m. On April 22, 2021, claimant failed to appear at the hearing, and ALJ Scott issued Order No. 21-UI-165373, dismissing claimant's request for hearing based on her failure to appear. On April 23, 2021, claimant filed a timely request to reopen the April 22, 2021 hearing. On August 6, 2021, OAH served notice of a hearing scheduled for August 27, 2021 at 8:15 a.m. to consider claimant's request to reopen and, if allowed, the merits of the March 4, 2021 WPBR. On August 27, 2021, ALJ Scott conducted a hearing, and on September 14, 2021 issued Order No. 21-UI-174674, allowing claimant's request to reopen, and modifying¹ the March 4, 2021 WPBR by concluding that claimant's weekly PEUC benefit amount should be \$412 for all PEUC weeks claimed. On September 28, 2021, the Department filed an application for review with the Employment Appeals Board (EAB).

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

EAB did not consider the Department's written argument when reaching this decision because they did not include a statement declaring that they provided a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019).

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 request to reopen is **adopted**. The remainder of this decision relates to the portion of the order under review that modified claimant's weekly PEUC benefit amount from \$171 to \$412.

¹ Although Order No. 21-UI-174674 stated that it reversed the March 4, 2021 WPBR, it modified that decision by changing claimant's weekly PEUC benefit amount from \$171 to \$412. Order No. 21-UI-174674 at 5.

FINDINGS OF FACT: (1) On July 23, 2019, claimant filed an initial claim for benefits, which established a benefit year beginning July 21, 2019 and expiring July 18, 2020 (weeks 30-19 through 29-20) (“the first benefit year”). The Department paid claimant regular unemployment insurance (regular UI) benefits through the week ending June 13, 2020 (week 24-20), when she exhausted her balance of regular UI benefits, and PEUC benefits thereafter for the weeks including June 14, 2020 through August 1, 2020 (weeks 25-20 through 31-20).² Claimant’s weekly benefit amount for both her regular UI benefits and her PEUC benefits during the first benefit year was \$171.

(2) On August 12, 2020, claimant filed another claim for benefits. The Department determined that claimant had sufficient wages to qualify for a new benefit year and a new benefit year was established beginning July 19, 2020 and expiring July 17, 2021 (weeks 30-20 through 28-21) (“the second benefit year”). The Department paid claimant regular UI benefits through the week ending January 16, 2021 (week 02-21), when she exhausted her balance of regular UI benefits, and PEUC benefits thereafter for the weeks including January 17, 2021 through April 10, 2021 (weeks 03-21 through 14-21). Claimant’s weekly benefit amount for her regular UI benefits during the second benefit year was \$412.

(3) On March 4, 2021, the Department determined that federal law required them to set claimant’s weekly PEUC benefit amount for the second benefit year at \$171 based upon the weekly PEUC benefit amount the Department set during the first benefit year. Claimant disputed the Department’s decision to set her weekly PEUC benefit amount for the second benefit year at \$171 because she believed that the appropriate weekly PEUC benefit amount should have been based on the regular UI weekly benefit amount calculated for the second benefit year, which was \$412.

CONCLUSIONS AND REASONS: Claimant’s weekly PEUC benefit amount for the second benefit year is \$171.

The United States Department of Labor issues Unemployment Insurance Program Letters (UIPL) to clarify how States are to administer federal programs. On December 31, 2020, the Department of Labor issued UIPL 17-20, Change 2, regarding the administration of the PEUC program. UIPL 17-20, Change 2, provides in pertinent part:

h. Entitlement to PEUC with respect to a subsequent benefit year. Particularly with the extension of the PEUC program, it is possible that an individual may become a regular [unemployment compensation] exhaustee with respect to entitlement established in more than one benefit year. As a result, it is possible that an individual may be able to establish PEUC entitlement more than once. In this case, *the individual must have exhausted all PEUC entitlement with respect to the first benefit year in addition to exhausting all regular [unemployment compensation] entitlement in the second benefit year before being potentially eligible for PEUC with respect to the second benefit year.* At that point, the state would determine PEUC entitlement based on the average [weekly benefit amount] payable during the second benefit year.

² Although claimant’s first benefit year expired at the conclusion of the week ending July 18, 2020 (week 29-20), the Department erroneously paid claimant PEUC benefits for the two weeks that followed, the weeks including July 19, 2020 through August 1, 2020 (weeks 30-20 through 31-20).

(Italicized emphasis added).

The order under review concluded that claimant was entitled to a weekly PEUC benefit amount of \$412 for the second benefit year “[b]ecause there is conflicting information from the Department of Labor with regard to the applicable benefit year, and because the Department erroneously opened a PEUC claim for claimant during a time period that she was actually eligible for a new regular unemployment insurance claim” Order No. 21-UI-174674 at 5. However, the record does not support the order under review’s conclusions.

The record demonstrates that during the first benefit year claimant exhausted her balance of regular UI benefits during the week ending June 13, 2020 (week 24-20). Claimant then claimed, and the Department paid, PEUC benefits until the expiration of the first benefit year, with the expiration occurring on July 18, 2020 (week 29-20). Contrary to the order under review’s finding, the Department did not erroneously open claimant’s PEUC claim during the first benefit year.

The Department subsequently determined that claimant had sufficient wages to qualify for a new benefit year and established a second benefit year beginning July 19, 2020 (week 30-20). Because claimant qualified for a second benefit year, her eligibility for PEUC ceased as of July 19, 2020 and until such time as she had exhausted her regular UI benefits in the second benefit year. Critically, however, claimant had not yet exhausted all of her PEUC entitlement with respect to the first benefit year at the time of the cessation of her PEUC benefits on July 19, 2020. When claimant subsequently exhausted her regular UI benefits in the second benefit year in week 02-21, she again became eligible for, and the Department paid, PEUC benefits. However, because claimant had not yet exhausted her PEUC entitlement from the first benefit year at the time she qualified for PEUC benefits in the second benefit year, UIPL 17-20, Change 2, required the Department to pay claimant her PEUC benefits at the \$171 weekly PEUC benefit amount established during the first benefit year and to continue paying at the \$171 rate until claimant had exhausted her PEUC entitlement from the first benefit year. As such, the Department correctly determined that claimant’s weekly PEUC benefit amount for the second benefit year is \$171 until such time as she has exhausted her PEUC balance from the first benefit year.³

DECISION: Order No. 21-UI-174674 is modified, as outlined above.

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

DATE of Service: November 5, 2021

³ While it is correct that language in UIPL 17-20, Change 1, supports claimant’s argument that the applicable benefit year for purposes of the weekly PEUC benefit amount would be the second benefit year, UIPL 17-20, Change 1, was issued by the Department of Labor on May 13, 2020, which is earlier in time than the December 31, 2020 issuance date of UIPL 17-20, Change 2. Because claimant’s eligibility for PEUC benefits during the second benefit year arose after the issuance of UIPL 17-20, Change 2, it is UIPL 17-20, Change 2, which is the Department of Labor’s authoritative guidance on the proper weekly PEUC benefit amount in this case. *See also* UIPL 17-20, Change 2, para. 3.a. (December 31, 2020) (“This UIPL also provides guidance about establishing entitlement to PEUC with respect to a second benefit year of regular [unemployment compensation]. All other PEUC program requirements, as provided in Section 2107 of the CARES Act and UIPL Nos. 17-20 and 17-20, Change 1, remain the same.”).

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 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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