

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0170

Affirmed

Eligible for Mixed Earner Unemployment Compensation weeks 01-21 through 35-21

PROCEDURAL HISTORY: On May 27, 2021, the Oregon Employment Department served a Notice of Determination for Mixed Earner Unemployment Compensation (MEUC) concluding that claimant was not entitled to MEUC benefits effective December 27, 2020 because the work claimant performed was not self-employment. Claimant filed a timely request for hearing. On January 10, 2022, ALJ S. Lee conducted a hearing, and on January 18, 2022 issued Order No. 22-UI-184306, reversing the May 27, 2021 administrative decision by concluding that claimant was eligible to receive MEUC benefits for the weeks including January 3, 2021 through September 4, 2021 (weeks 01-21 through 35-21). On January 27, 2021, the Department filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: The Department and claimant each submitted written arguments. EAB considered both arguments when reaching this decision. The Department contended that the order under review erred in concluding that claimant was eligible for MEUC because, in the Department's view, the evidence of earnings claimant submitted to establish he earned a sufficient amount of self-employment income to be eligible for MEUC did not constitute self-employment income. *See* OED Argument. To be eligible for MEUC benefits, as the order under review stated, a person must have earned, in the taxable year before they filed their application for regular unemployment insurance (Regular UI) benefits, at least \$5,000 in self-employment income as defined by section 1402(b) of the Internal Revenue Code. Order No. 22-UI-184306 at 5. The order evaluated the evidence of self-employment income submitted by claimant, who was the sole member of a limited liability company (LLC) and had earned more than \$5,000 in company profits in the taxable year before applying for regular benefits, and concluded that it met the definition of self-employment income under the Internal Revenue Code and therefore established MEUC eligibility. Order No. 22-UI-184306 at 5-6.

The Department argued that claimant's earnings in company profits did not amount to self-employment income because, under the Department's interpretation, claimant was in an employment relationship with his LLC and any earnings claimant received from LLC profits were wages subject to Regular UI eligibility rather than self-employment income. *See* OED Argument. The Department further argued that its interpretation should control whether the earnings are characterized as self-employment income because federal guidance pertaining to MEUC states "[i]f . . . there is a question about . . . whether there

is an employer/employee relationship . . . state [unemployment compensation] law and policy will be the basis for making this determination.” U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 15-20, Change 3 at 6 (January 5, 2021) (UIPL 15-20 Change 3).

The Department’s arguments are not persuasive. First, both the language of the MEUC statute, as well as the very same federal guidance document the Department cited, make plain that the definition in section 1402(b) of the Internal Revenue Code governs whether earnings constitute self-employment income for purposes of MEUC, not an internal Department policy interpretation. *See* the Consolidated Appropriations Act, 2020, including Division N, Title II, Subtitle A, the Continued Assistance for Unemployed Workers Act of 2020 Section 261(a) (“[A]n additional amount of \$100 [in MEUC benefits is payable] in any case in which the individual received at least \$5,000 of self-employment income (as defined in section 1402(b) of the Internal Revenue Code of 1986)[.]”); UIPL 15-20 Change 3 at 6 (“Section 261 of the Continued Assistance Act defines self-employment income by reference to Section 1402(b) of the Internal Revenue Code of 1986[.]”). The order under review applied that Internal Revenue Code definition to the earnings in question in this case and correctly found that the earnings constituted self-employment income. Order No. 22-UI-184306 at 5-6. While the Department may apply a different policy internally, the plain language of the MEUC statute controls.

Further, even if resort to state law principles had been necessary to determine whether the earnings constituted self-employment income, state law leads to the same result. The only state law authority cited in the Department’s argument is ORS 657.044. *See* OED Argument. As relevant here, ORS 657.044(1)(c) states that, “‘employment’ does not include service performed for: . . . A limited liability company by a member[.]” This language would appear to exclude from the definition of “employment” any service claimant performed as a member for his LLC and therefore suggests, counter to the Department’s argument, that earnings claimant received for such service were not received in the context of an employment relationship between claimant and his LLC. Thus, to any extent that the self-employment income in this case was received by claimant for services claimant performed as a member for his LLC, the language of ORS 657.044(1)(c) does not support that claimant was in an employment relationship with his LLC or that earnings claimant received from LLC profits were wages subject to Regular UI eligibility. Therefore, ORS 657.044—the only state law authority cited by the Department—is in harmony with the result of the order under review.

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the order under review is **adopted**.

DECISION: Order No. 22-UI-184306 is affirmed.

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

DATE of Service: March 11, 2022

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 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.

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

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.