

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0657

Reversed
Claim Redetermination Allowed

PROCEDURAL HISTORY: On January 28, 2022, the Oregon Employment Department (the Department) served notice of an administrative decision denying claimant's request to adjust her initial claim determination by adding wages and hours of work to her unemployment insurance claim. Claimant filed a timely request for hearing. On May 25, 2022, ALJ Blam-Linville conducted a hearing at which the employer Marcial Lemus Trucking failed to appear, and on June 3, 2022 issued Order No. 22-UI-195281, affirming the January 28, 2022 administrative decision. On June 9, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: EAB considered claimant's written argument 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 document which claimant enclosed with her written argument, and has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. This evidence is necessary to complete the record. Any party that objects to our admitting EAB Exhibit 1 must submit such objection to this office in writing, setting forth the basis of 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.

FINDINGS OF FACT: (1) During the fourth quarter of 2020, claimant performed work for an employer ("OSA"), and was paid \$1,766.86 in wages. During the same calendar quarter, claimant worked for another employer ("FFLLC") and was paid \$4,000.00 in wages.

(2) In the first quarter of 2021, claimant filed an initial claim for unemployment insurance benefits. The Department determined that this claim was monetarily valid, and subsequently paid claimant benefits on the claim for that benefit year (“the prior benefit year”).¹

(3) Also in the first quarter of 2021, claimant worked for another employer (“BAS”), and was paid \$312.00 in wages. Claimant continued working for BAS through the second quarter of 2021, and was paid \$653.90 in wages by BAS in that quarter.

(4) From September 13, 2021 through September 29, 2021, claimant worked for Marcial Lemus Trucking (herein “the employer”). Claimant worked 258.5 hours for the employer during that time period.

(5) At or around the time that claimant performed the work in September 2021, the employer paid claimant \$240.00 in wages for the work she performed. The employer owed claimant more than \$240.00 for the work she performed in September 2021 but did not pay claimant the balance of wages owed to her at that time.

(6) On January 3, 2022, claimant filed an initial claim for unemployment insurance benefits, with a base year consisting of the fourth quarter of 2020, the first quarter of 2021, the second quarter of 2021, and the third quarter of 2021, and a weekly benefit amount of \$171. The wages paid to claimant for her work for OSA, FLLC, and BAS were factored into the Department’s determination of her claim for this benefit year (“the benefit year at issue”). The wages that the employer either paid, or owed, claimant for her work in September 2021 were not factored into the determination of the benefit year at issue because claimant did not have proof of earnings for that time period and the Department was unable to contact the employer to obtain it.

(7) The Department determined that claimant did not have a monetarily valid claim for the benefit year at issue. The Department determined this was because she did not earn wages in subject employment equal to six times her weekly benefit amount after the beginning of the prior benefit year that started in the first quarter of 2021.

(8) The minimum weekly benefit amount payable to any individual when claimant filed her initial claim for the benefit year at issue was \$171.²

(9) On May 19, 2022, the employer paid claimant \$2,772.00 in wages that they owed her for her work in September 2021. EAB Exhibit 1.

¹ EAB has taken notice of this fact, which is contained in Employment Department records. OAR 471-041-0090(1). Any party that objects to our taking notice of this information must submit such objection to this office in writing, setting forth the basis of 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 noticed fact will remain in the record.

² EAB has taken notice of this fact, which is contained in Employment Department records. OAR 471-041-0090(1). Any party that objects to our taking notice of this information must submit such objection to this office in writing, setting forth the basis of 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 noticed fact will remain in the record.

CONCLUSIONS AND REASONS: Claimant’s request to adjust her claim determination is allowed.

ORS 657.150(2)(a) provides that in order to qualify for benefits, an individual must have:

(A) Worked in subject employment in the base year³ with total base year wages of \$1,000 or more and have total base year wages equal to or in excess of one and one-half times the wages in the highest quarter of the base year; and

(B) Have earned wages in subject employment equal to six times the individual’s weekly benefit amount in employment for service performed subsequent to the beginning of a preceding benefit year if benefits were paid to the individual for any week in the preceding benefit year.

If the individual does not meet the requirements of ORS 657.150(2)(a)(A), the individual may qualify for benefits if the individual has worked a minimum of 500 hours in subject employment during the base year. ORS 657.150(2)(b).

In order for claimant to have had a monetarily valid claim for the benefit year at issue, claimant must have satisfied the provisions of either ORS 657.150(2)(a)(A) or ORS 657.150(2)(b), and must also have satisfied the provisions of ORS 657.150(2)(a)(B). The record shows that the Department had already determined that claimant worked 500 or more hours in subject employment during her base year, thus satisfying the provisions of ORS 657.150(2)(b). However, at hearing, the Department’s witness testified that the Department had found claimant to be monetarily ineligible for the benefit year at issue because she had not satisfied the provisions of ORS 657.150(2)(a)(B)—the so-called “double dip” test. Transcript at 8. In other words, the Department found that claimant was not eligible because she had not shown that she earned equal to or more than six times the weekly benefit amount of her new claim after the beginning of the prior benefit year that started in the first quarter of 2021. The order under review affirmed the January 28, 2022 administrative decision on this basis, concluding that claimant was not eligible because the amount claimant had only reported \$965.90 in “verifiable earnings” in 2021, which was \$60.10 less than the \$1,026.00 threshold required to pass the “double dip” test. Order No. 22-UI-195281 at 3. In light of the additional evidence that claimant submitted with her written argument, this conclusion is not supported by the record.

The record shows that the employer paid claimant a total of \$3,012.00: \$240.00 at or around the time that claimant performed the work in September 2021, and \$2,772.00 on May 19, 2022 in wages the employer owed her for work she performed in September 2021. Because these wages related to work claimant performed in September 2021, the record shows claimant earned the \$3,012.00 for services performed after the beginning of the prior benefit year that started in the first quarter of 2021. Claimant’s \$3,012 in earnings was more than six times the weekly benefit amount of the claim for the benefit year at issue because the weekly benefit amount of the claim was \$171 ($\$171.00 \times 6 = \$1,026.00$), and the \$3,012.00 claimant earned is more than \$1,026.00. Because claimant was paid wages after the first quarter of 2021 in an amount that exceeds six times her weekly benefit amount, claimant satisfied the “double dip” test of ORS 657.150(2)(a)(B), and therefore earned sufficient wages in her base year to monetarily qualify her for benefits during the benefit year at issue.

³ “Base year” means the first four of the last five completed calendar quarters preceding the benefit year. ORS 657.010(1).

Note that under ORS 657.150(4)(a), an eligible individual's weekly benefit amount shall be 1.25 percent of the total wages paid in the individual's base year, but not less than the minimum WBA payable to any claimant during that benefit year. 1.25 percent of claimant's total wages during her base year, including the balance that the employer paid her for work she performed in September 2021, equals approximately \$121.81 ($\$9,744.76 \times 0.0125 = \121.8095). As this amount is less than the minimum payable weekly benefit amount, claimant is eligible for a weekly benefit amount of \$171.00. Accordingly, claimant's weekly benefit amount, calculated in light of the balance that the employer paid her for work she performed in September 2021, remains \$ 171.00.

DECISION: Order No. 22-UI-195281 is set aside, as outlined above.

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

DATE of Service: September 14, 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.

NOTE: This decision reverses an order that denied benefits. Please note that payment of benefits, if any are owed, may take approximately a week for the Department to complete.

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 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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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.