

**EMPLOYMENT APPEALS BOARD DECISION**  
**2022-EAB-0862**

*Affirmed*

*Eligible for Mixed Earner Unemployment Compensation Weeks 53-20 through 35-21*

**PROCEDURAL HISTORY:** On June 14, 2021, the Oregon Employment Department (the Department) served a Notice of Determination for Mixed Earner Unemployment Compensation (MEUC) concluding that claimant was not eligible to receive MEUC benefits effective December 27, 2020. Claimant filed a timely request for hearing. On July 15, 2022, ALJ Scott conducted a hearing, and on July 18, 2022 issued Order No. 22-UI-198464, reversing the June 14, 2021 administrative decision by concluding that claimant was eligible for MEUC for the weeks including December 27, 2020 through September 4, 2021 (weeks 53-20 through 35-21). On August 3, 2022, the Department filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** EAB considered the Department's written argument when reaching this decision.

**FINDINGS OF FACT:** (1) In 2019, claimant worked in management roles for an electronics company and a countertops company. The work claimant performed for these employers was considered employment subject to Oregon's unemployment insurance program. This meant that the wages claimant received from the employers earned him credit toward monetary eligibility for regular unemployment insurance (regular UI) benefits.

(2) Also in 2019, claimant performed services as a soccer referee for recreational and interscholastic soccer leagues and organizations. Claimant's soccer officiating services were not considered employment subject to Oregon's unemployment insurance program.<sup>1</sup> During 2019, claimant provided officiating services for 20 different organizations. Claimant passed required state testing and obtained

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<sup>1</sup> See ORS 657.088.

soccer referee licensing credentials to perform the services. Claimant could accept or decline work as he wished and could negotiate the rate of pay for each individual game. Claimant purchased soccer equipment used in the games and transported the equipment to and from games. As a soccer referee, claimant applied his knowledge of the rules of the game to make independent judgment calls about all aspects of the game, such as whether to caution players for fouls and when to announce stoppages in the run of play. Claimant received \$8,393.82 for his soccer officiating activities in 2019.

(3) On April 6, 2020, claimant filed an initial claim for regular UI benefits. The Department determined that claimant had sufficient wages in subject employment from his work for the electronics company and countertops company to establish a valid claim for regular UI benefits. Claimant claimed regular UI benefits on a weekly basis thereafter.

(4) On December 27, 2020, Congress enacted a law that created, among other things, the MEUC benefits program. The MEUC program provided a \$100 supplemental weekly benefit to certain individuals with self-employment income who receive regular UI benefits.

(5) In May 2021, claimant applied for MEUC, believing he was eligible for the program because of his soccer officiating activities. Claimant claimed MEUC benefits for the weeks including December 27, 2020 through September 4, 2021 (weeks 53-20 through 35-21). These are the weeks at issue.

**CONCLUSIONS AND REASONS:** Claimant was eligible for MEUC benefits during the weeks at issue.

Title II, Subtitle A, Section 2104 of the Coronavirus Aid, Relief, and Economic Security Act of 2020 (“the CARES Act”), 15 U.S.C. § 9001 - 9141, provides, in relevant part:

(a) Federal-State Agreements.—Any State which desires to do so may enter into and participate in an agreement under this section with the Secretary of Labor (in this section referred to as the “Secretary”). Any State which is a party to an agreement under this section may, upon providing 30 days' written notice to the Secretary, terminate such agreement.

(b) Provisions of Agreement.—

(1) Federal pandemic unemployment compensation.—Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to—

(A) the amount determined under the State law (before the application of this paragraph), plus

(B) an additional amount of \$600 (in this section referred to as "Federal Pandemic Unemployment Compensation").

(2) Allowable methods of payment.—Any Federal Pandemic Unemployment Compensation provided for in accordance with paragraph (1) shall be payable either—

(A) as an amount which is paid at the same time and in the same manner as any regular compensation otherwise payable for the week involved; or

(B) at the option of the State, by payments which are made separately from, but on the same weekly basis as, any regular compensation otherwise payable.

\* \* \*

15 U.S.C. § 9023.

With emphasis added, The Consolidated Appropriations Act, 2021, Division N, Title II, Subtitle A, Chapter I, Subchapter I, the Continued Assistance for Unemployed Workers Act of 2020 (“the CAA”) provides, in relevant part:

SECTION 261. MIXED EARNER UNEMPLOYMENT COMPENSATION.

(a) In General.—Section 2104(b) of the CARES Act (15 U.S.C. 9023(b)(1)), as amended by section 1103, is further amended—

(1) in paragraph (1)—

(A) in subparagraph (B), by striking the period at the end and inserting ", plus"; and

(B) by adding at the end the following: "

(C) an additional amount of \$100 (in this section referred to as ‘Mixed Earner Unemployment Compensation’) 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)* in the most recent taxable year ending prior to the individual's application for regular compensation."

\* \* \*

26 U.S.C. § 1402 provides, in relevant part:

(a) Net earnings from self-employment

The term “net earnings from self-employment” means the gross income derived by an individual from any trade or business carried on by such individual[.]

\* \* \*

(b) Self-employment income

The term “self-employment income” means the net earnings from self-employment derived by an individual[.]

\* \* \*

(c) Trade or business

The term “trade or business”, when used with reference to self-employment income or net earnings from self-employment, shall have the same meaning as when used in section 162 (relating to trade or business expenses), except that such term shall not include—

\* \* \*

(2) the performance of service by an individual as an employee[.]

\* \* \*

As an initial matter, the Department contends in its written argument that state law principles should govern whether claimant was eligible for MEUC, asserting that whether claimant was eligible for MEUC turns on whether he was an independent contractor under ORS 670.600. OED Written Argument at 1. The Department’s argument echoes an assertion that the Department representative made at hearing, stating that ORS 670.600 should apply to decide whether claimant was an independent contractor and thus self-employed, and therefore whether the income he received as a soccer referee was “self-employment income” such that it counts to meet the \$5,000 threshold for MEUC eligibility. Transcript at 9-10, 15. To support its contentions, the Department’s written argument cites to a U.S. Department of Labor guidance document that states “[i]f . . . there is a question about . . . whether there is an employer/employee relationship (*e.g.* the income was included in the individual’s wage records) 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 approach is problematic. First, the same guidance document the Department cites states that the definition in section 1402(b) of the Internal Revenue Code governs the MEUC “self-employment income” analysis. 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[.]”). UIPL 15-20 Change 3 goes on to explain that under 1402(b), “self-employment income” means the “net earnings from self-employment derived by an individual” during a taxable year, which in turn means the gross income derived by an individual from any “trade or business” the individual carries

on. UIPL 15-20 Change 3 at 6. The statement that the Department asserts as authority for making MEUC eligibility turn on ORS 670.600 is made only after a lengthy discussion in the guidance document of the Internal Revenue Code concepts that derive from Section 1402(b). UIPL 15-20 Change 3 at 6.

Moreover, the words of Congress itself, expressed in CAA section 261, are paramount and they make plain that “self-employment income” is a term of art that is governed by section 1402(b) of the Internal Revenue Code of 1986, not principles of state law. In CAA section 261, Congress directed that an additional weekly amount of \$100 shall be 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)[.]” With this language, Congress spoke with unmistakable clarity that “self-employment income” is a concept defined by section 1402(b) of the Internal Revenue Code. Therefore, the Department is bound to follow the mandatory command of section 261 and assess self-employment income via the section 1402(b) definition.

Section 1402(b) provides that “self-employment income” means, in pertinent part, “the net earnings from self-employment derived by an individual . . . during any taxable year[.]” 26 U.S.C. § 1402(b). In pertinent part, section 1402(a) of the Internal Revenue Code defines “net earnings from self-employment” as “the gross income derived by an individual from any trade or business carried on by such individual[.]” 26 U.S.C. § 1402(a). Finally, section 1402(c) of the Internal Revenue Code provides that, when used with reference to “self-employment income” and “net earnings from self-employment,” the term “trade or business” has the same meaning as used in section 162 of the Internal Revenue Code. 26 U.S.C. § 1402(c). However, in pertinent part, section 1402(c)(2) states that “trade or business” does not include “the performance of service by an individual as an employee[.]” 26 U.S.C. § 1402(c). Further, section 162 simply authorizes deductions for trade or business expenses but does not further define what “trade or business” means. 26 U.S.C. § 162(a). In the absence of a prescribed definition, it is reasonable to consult dictionary definitions to interpret the phrase.

Thus, taking section 1402(b) together with the sections it references, the \$8,393.82 claimant received for soccer officiating in 2019 was “self-employment income” if it was derived from carrying on a trade or business, so long as claimant’s activities did not amount to the “performance of service by an individual as an employee.” Dictionary definitions of “trade” and “business” are broad enough to conclude that claimant’s soccer officiating activities were a trade or business.<sup>2</sup> It is only on the question of whether claimant performed his officiating services as an “employee” that it is appropriate to look to state law principles, as UIPL 15-20 Change 3 states. ORS 657.015, emphasis added, states that “employee” means “any person . . . employed for remuneration . . . by an employer subject to this chapter *in an employment subject to this chapter.*” However, ORS 657.088 states that “As used in this chapter ‘employment’” does not include officiating services performed by individuals in recreational, interscholastic or intercollegiate sporting events or contests.” Here, because ORS 657.015 requires an “employee” to be in an employment subject to ORS Chapter 657, yet ORS 657.088 states that employment subject to Chapter 657 does not include officiating services like those claimant performed,

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<sup>2</sup> See, e.g., <https://www.merriam-webster.com/dictionary/trade> (defining “trade,” among other things, as “an occupation requiring manual or mechanical skill” and “the business or work in which one engages regularly”); <https://www.merriam-webster.com/dictionary/business> (defining “business,” among other things, as “a usually commercial or mercantile activity engage in as a means of livelihood”).

state law principles support the conclusion that claimant was not an “employee” in connection with his soccer officiating activities.

Therefore, the record supports that the \$8,393.82 claimant received for soccer officiating in 2019 was derived from carrying on a trade or business, and claimant’s activities did not amount to the performance of service by an individual as an employee. For these reasons, the \$8,393.82 claimant received for soccer officiating in 2019 was “self-employment income” under section 1402(b) of the Internal Revenue Code of 1986. The record shows that 2019 was the taxable year ending prior to claimant’s April 6, 2020 regular UI initial claim. Because claimant received at least \$5,000 in self-employment income in the taxable year prior to his application for regular UI, he was entitled to MEUC benefits for the weeks at issue.

Moreover, even if evaluating whether claimant was an independent contractor per ORS 670.600 were the appropriate test to determine claimant’s eligibility for MEUC, the outcome would be the same. ORS 657.040(1) provides that services performed by an individual for remuneration are deemed to be employment subject to this chapter unless and until it is shown to the satisfaction of the Director of the Employment Department that the individual is an independent contractor, as that term is defined in ORS 670.600. ORS 670.600(2) defines “independent contractor” as follows:

As used in ORS [chapter] \* \* \* 657 \* \* \*, “independent contractor” means a person who provides services for remuneration and who, in the provision of the services:

- (a) Is free from direction and control over the means and manner of providing the services, subject only to the right of the person for whom the services are provided to specify the desired results;
- (b) Except as provided in subsection (4) of this section, is customarily engaged in an independently established business;
- (c) Is licensed under ORS chapter 671 or 701 if the person provides services for which a license is required under ORS chapter 671 or 701; and
- (d) Is responsible for obtaining other licenses or certificates necessary to provide the services.

The record shows that claimant was free from direction and control over the means and manner of providing his soccer officiating services. OAR 471-031-0181(3)(a)(A) (February 1, 2007) describes “means” as resources used in performing the services and provides as examples such things as equipment and licenses. The record shows that claimant obtained soccer equipment for the soccer games and transported the equipment to and from games. Claimant also obtained the soccer referee licensing credentials necessary to perform his officiating services. This record evidence is sufficient to show that claimant was free from direction and control over the means of performing the soccer officiating, given that there is no indication that anyone other than claimant dictated how to use these resources. Similarly, OAR 471-031-0181(3)(a)(B) describes “manner” as the method by which the services are performed and requires claimant to have determined how to perform the work. As a soccer referee, claimant

applied his knowledge of the rules of the game to make independent judgment calls about all aspects of the game, such as whether to caution players for fouls and when to announce stoppages in the run of play. Claimant was also free to accept or decline officiating opportunities as he wished, and to negotiate the rate of pay for each individual game. These facts support that claimant was free from direction and control over how to perform the officiating services.

The record also shows that claimant was customarily engaged in an independently established business. Under ORS 670.600(3), this requirement is met when any three of several enumerated requirements are met under the statute. Here, claimant meets the requirements because he contracted services for two or more different persons within a 12-month period, made a significant investment in the business by purchasing necessary equipment and paying for required licenses, and had the authority to hire and fire other persons. For example, claimant provided officiating services for 20 different organizations during 2019. Claimant purchased necessary soccer equipment and incurred the costs of required state testing and obtaining the licensing necessary to be a referee. The record supports the inference that claimant had the authority to hire and fire others given the substantial latitude claimant had to accept or decline officiating opportunities and negotiate pay with the organizations for whom he provided services, and the fact that claimant obtained and transported necessary equipment. Finally, ORS 670.600(2)(c) applies only to architects and construction contractors and so is inapplicable; and the record shows that claimant satisfied subpart (d) because he passed required state testing and obtained soccer referee licensing credentials to perform his officiating services.

Thus, to any extent it is necessary for claimant to meet the definition of an independent contractor for the \$8,393.82 he received for soccer officiating in 2019 to constitute “self-employment income,” the record shows that claimant met that definition. Therefore, the \$8,393.82 claimant received for soccer officiating in 2019 was self-employment income. Because claimant received at least \$5,000 in self-employment income in the taxable year prior to his application for regular UI, he was entitled to MEUC benefits for the weeks at issue.

**DECISION:** Order No. 22-UI-198464 is affirmed.

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

**DATE of Service:** November 9, 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](https://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.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 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 ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

**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  
[www.Oregon.gov/Employ/eab](http://www.Oregon.gov/Employ/eab)

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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.