

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0882

Affirmed
No Claim Redetermination

PROCEDURAL HISTORY: On May 26, 2022, the Oregon Employment Department (the Department) served notice of a Wage and Potential Benefit Report (WPBR) that adjusted the determination on claimant's claim by adding wages and hours, which led to a total of \$12,682.07 in base year wages and 639 base year hours. Claimant filed a timely request for hearing. On July 15, 2022, the Department served notice of another WPBR which superseded the May 26, 2022 WPBR by adding wages and hours that led to a total of \$14,090.40 in base year wages and 685 base year hours. On July 27, 2022, ALJ Micheletti conducted a hearing, and on August 4, 2022 issued Order No. 22-UI-199831, affirming the July 15, 2022 WPBR by concluding that it reflected all wages that claimant had earned during his base year. On August 9, 2022, claimant filed an application for review with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: In his written argument, claimant requested that EAB consider additional evidence not in the hearing record, including "pay stubs previously submitted" to the Department and a "copy of [a] W-4 wage reported submitted to the UI department [which reflects claimant's] total wages from S3 Manufacturing." Claimant's Written Argument at 1. While the Department may be in possession of these documents, they are not in the hearing record. The Notice of Hearing served on claimant prior to the hearing advised that the documents enclosed with the notice were the only documents that would be considered by the ALJ at hearing unless claimant submitted other documents into the record prior to the hearing. June 29, 2022 Notice of Hearing at 1. Claimant did not show that factors or circumstances beyond claimant's reasonable control prevented him from offering the additional information in his written argument into the hearing record. Therefore, under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant's argument to the extent it was based on the record.

FINDINGS OF FACT: (1) On February 28, 2021, claimant filed an initial claim for unemployment insurance benefits. The Department determined that claimant's base year was the fourth quarter of 2019 through the third quarter of 2020 (October 2019 through September 2020).

(2) The Department determined, as reflected on the July 15, 2022 WPBR, that claimant had no hours or earnings in the fourth quarter of 2019; had \$230.00 in earnings and 77 hours with Central Machine and Fabrication in the first quarter of 2020; had \$2,730.00 in earnings and 250 hours with Central Machine and Fabrication during the second quarter of 2020; and had \$11,130.40 and 358 hours with S3 Manufacturing, Inc. during the third quarter of 2020. Based on these totals, the Department determined that claimant was eligible for a weekly benefit amount of \$176.00 and a maximum benefit amount of \$4,576.00.

(3) Claimant later submitted a copy of a check stub from S3 Manufacturing, Inc., dated July 7, 2020, in the amount of \$1,274.72. The check stub did not contain an accounting of any withholdings made from the check or any other indication that claimant was paid as an employee.

CONCLUSIONS AND REASONS: Claimant's request to adjust his claim determination is denied.

ORS 657.150 provides, in relevant part:

(1) An individual shall be paid benefits for weeks during the benefit year in an amount that is to be determined by taking into account the individual's work in subject employment in the base year as provided in this section.

(2)(a) To qualify for benefits an individual must have:

(A) Worked in subject employment in the base year 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.

(b) If the individual does not meet the requirements of paragraph (a)(A) of this subsection, the individual may qualify for benefits if the individual has worked a minimum of 500 hours in employment subject to this chapter during the base year.

* * *

(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. However, such amount shall not be less than the minimum, nor more than the maximum weekly benefit amount.

* * *

OAR 471-030-0010 (January 11, 2018) provides that, for purposes of ORS 657.150(2) and (4) wages shall be assigned to the calendar quarter in which they are paid, in the same manner that taxes are payable pursuant to OAR 471-031-0070(1).

The July 15, 2022 WPBR determined that claimant's total base year wages included \$11,130.40 in wages from S3 Manufacturing, Inc. during the third quarter of 2020. At hearing, claimant asserted that an additional \$1,274.72 should have been added to his wages during that quarter. Transcript at 24. To support this assertion, claimant produced a copy of a check stub from S3 Manufacturing, Inc., dated July 7, 2020, for that amount. Exhibit 2 at 2. This documentation is insufficient to show that the \$1,274.72 should be added to claimant's base-year wages.

In order for this sum to be added to claimant's base year wages, the monies paid to claimant must be wages in subject employment.¹ While the check stub shows that S3 Manufacturing, Inc. paid claimant that amount, it does not show that the amount paid was for wages in subject employment. In particular, the check stub contains no indication any taxes were withheld, or other deductions made, that would tend to indicate an employment relationship between claimant and S3 Manufacturing, nor does it state what the payment was for.

Further, even if it were assumed that the July 7, 2020 check represented wages paid to claimant in subject employment, the record does not contain an accounting of all of the wages or other sums that S3 Manufacturing paid to claimant during the third quarter of 2020. Without such information, it is impossible to ascertain whether the \$1,274.72 sum has already been included in the \$11,130.40 figure that was determined to be claimant's third quarter 2020 wages.

For the above reasons, claimant is not entitled to add the \$1,274.72 sum to his base year wages.

DECISION: Order No. 22-UI-199831 is affirmed.

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

DATE of Service: November 10, 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.

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¹ *See generally* ORS 657.040.



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
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