

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0130-R**

*Request for Reconsideration Allowed*  
*EAB Decision 2023-EAB-0130 Modified on Reconsideration*  
*Wage and Potential Benefit Report Redetermined*

**PROCEDURAL HISTORY:** On November 14, 2022, the Oregon Employment Department (the Department) served notice of an amended Wage and Potential Benefit Report (WPBR) concluding that claimant’s weekly benefit amount was \$183.00 with a maximum benefit amount of \$2,915.00. Claimant filed a timely request for hearing. On December 14, 2022 and December 30, 2022, ALJ Mott conducted a hearing, and on January 5, 2023 issued Order No. 23-UI-211623, concluding that claimant was entitled to a redetermination of their WPBR that added \$1,226.10 in wages and 136.75 hours to her claim for a weekly benefit amount of \$183.00 and a maximum benefit amount of \$3,324.00. On January 20, 2023, the Department filed an application for review with the Employment Appeals Board (EAB). On March 15, 2023, EAB issued EAB Decision 2023-EAB-0130, affirming Order No. 23-UI-211623. On March 27, 2023, the Department filed a request for reconsideration of EAB Decision 2023-EAB-0130.

This decision is issued pursuant to EAB’s authority under ORS 657.290(3).

**FINDINGS OF FACT:** (1) Claimant was employed by Georgia Department of Natural Resources (GDNR) from September 2021 until December 2021. For the work performed during the fourth quarter of 2021, claimant was paid \$452.50 during that quarter.

(2) Claimant was employed by the United States Department of Agriculture (USDA) from April 2022 until September 2022. Claimant was paid \$1,241.76 in the second quarter of 2022, and \$8,278.40 in the third quarter of 2022, for work performed during those two quarters.

(3) On October 20, 2022, USDA paid claimant \$644.76 for work performed in the previous quarter.

(4) On October 23, 2022, claimant filed an initial combined-wage claim for unemployment insurance benefits with the Department.<sup>1</sup> The Department determined that claimant did not have sufficient wages

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<sup>1</sup> The record does not indicate whether claimant had “covered wages under the employment compensation law of more than one State,” and thus met the definition of a “Combined-Wage Claimant.” 20 CFR § 616.6(d). However, since the Department

or hours to establish a monetarily valid claim during her regular base year of July 1, 2021 through June 30, 2022. However, the Department determined that claimant had a monetarily valid claim using an alternate base year of October 1, 2021 through September 30, 2022. The Department determined that claimant had \$1,241.76 in wages and 78 hours in the second quarter of 2022, and \$7,054.80 in wages and 469 hours in the third quarter of 2023, all from USDA.

(5) On her initial claim, claimant reported working only for USDA and GDNR from October 2021 through September 2022. The Department requested verification of employment and wages directly from USDA, but did not request employment and wage verification from GDNR either directly or by requesting a transfer of GDNR wages from the Georgia Department of Labor, which administers that state's unemployment insurance program. Claimant also reported earnings from self-employment she believed should have been included in the WPBR.

(6) On November 14, 2022, the Department mailed to claimant an amended WPBR, based on a response received directly from USDA, which listed covered earnings from USDA of \$1,241.76 for the second quarter of 2022, \$7,504.80 for the third quarter of 2022, and a combined 547 hours of work for USDA during these two quarters. The amended WPBR did not contain any wages from GDNR.

**CONCLUSIONS AND REASONS:** The Department's request for reconsideration is allowed. On reconsideration, EAB Decision 2023-EAB-0130 and Order No. 23-UI-211623 are modified. Claimant is entitled to a redetermination of her WPBR. The Department must seek transfer from the Georgia Department of Labor of claimant's reported fourth quarter 2021 wages from GDNR. The redetermination of claimant's WPBR should include wages from GDNR, if any are transferred; the addition of \$1,223.60 in wages from USDA for the third quarter of 2022, for a total of \$8,278.40 in wages from USDA for that quarter; and a recalculation of claimant's maximum benefit amount based on the new wages added to her claim.

**Reconsideration.** ORS 657.290(3) authorizes the Employment Appeals Board (EAB) to reconsider any previous decision of EAB, including "the making of a new decision to the extent necessary and appropriate for the correction of previous error of fact or law." "Any party may request reconsideration to correct an error of material fact or law, or to explain any unexplained inconsistency with Employment Department rule, or officially stated Employment Department position, or prior Employment Department practice." OAR 471-041-0145(1) (May 13, 2019). The request is subject to dismissal unless it includes a statement that a copy was provided to the other parties, and is filed on or before the 20<sup>th</sup> day after the decision sought to be reconsidered was mailed. OAR 471-041-0145(2).

The Department filed their request for reconsideration on March 27, 2023, which was within 20 days of the mailing of EAB Decision 2023-EAB-0130. The Department's request included a statement that a copy was provided to claimant. In their request for reconsideration of EAB Decision 2023-EAB-0130, the Department alleged that an error of law should be corrected, in that the Decision affirmed Order No. 23-UI-211623. The specific error alleged is that the Department was ordered to redetermine claimant's WPBR by adding wages that were subject to transfer from another state, but 20 CFR § 616.8(d) precludes Oregon from making such a determination because it "involves the amount of employment

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argued in their request for reconsideration that 20 CFR. § 616.8, governing combined-wage claims, is applicable, it is inferred that the Department determined claimant's to be a combined-wage claim. Department's Request for Reconsideration at 1.

and wages subject to transfer.” Department’s Request for Reconsideration at 1. Accordingly, the Department has satisfied all of the conditions of ORS 657.290(3), and their request for reconsideration is allowed.

**Redetermination of WPBR.** ORS 657.025 defines “employment,” in relevant part, as “service for an employer, including service in interstate commerce, within or outside the United States, performed for remuneration or under any contract of hire, written or oral, express or implied.” ORS 657.25 defines “employer” as “any employing unit which employs one or more individuals in an employment subject to this chapter in each of 18 separate weeks during any calendar year, or in which the employing unit’s total payroll during any calendar quarter amounts to \$1,000 or more.” ORS 657.015 defines “employee” as any person, including aliens and minors, employed for remuneration or under any contract of hire, written or oral, express or implied, by an employer subject to this chapter in an employment subject to this chapter.

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.

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(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.

\* \* \*

(5) Benefits paid to an eligible individual in a benefit year shall not exceed 26 times the individual’s weekly benefit amount, or one-third of the base year’s wages paid, whichever is the

lessor. If such amount is not a multiple of \$1, it shall be computed to the next lower multiple of \$1.

ORS 657.266 provides, in relevant part:

(1) An authorized representative shall promptly examine each new claim for benefits and, on the basis of information available, determine the total amount of wages paid to the claimant during the base year and whether or not such amount is sufficient to qualify the claimant for benefits and, if so, the weekly benefit amount payable to the claimant, the maximum amount payable with respect to such benefit year and the maximum duration thereof. The initial determination under this section shall be applicable to all weeks of the benefit year respecting which the claim was filed; however, such determination may be amended with respect to any week or weeks of the benefit year.

(2) The Director of the Employment Department shall promptly give notice of an initial determination under this section to the claimant and to any employers that have paid wages to the claimant during the base year. Initial notice to a base-year employer shall include notice of the potential charges to the employer's account under ORS 657.471.

(3) The director shall promptly give notice of an amended determination under this section to the claimant and to all employers that have paid wages to the claimant during the base year and that are affected by the amended determination.

20 CFR § 616.8 provides, in relevant part:

(a) The paying State shall request the transfer of a Combined-Wage Claimant's employment and wages in all States during its base period, and shall determine the claimant's entitlement to benefits (including additional benefits, extended benefits and dependents' allowances when applicable) under the provisions of its law based on employment and wages in the paying State, and all such employment and wages transferred to it hereunder. The paying State shall apply all the provisions of its law to each determination made hereunder, except that the paying State may not determine an issue which has previously been adjudicated by a transferring State. Such exception shall not apply, however, if the transferring State's determination of the issue resulted in making the Combined-Wage Claim possible under § 616.7(b)(2). If the paying State fails to establish a benefit year for the Combined-Wage Claimant, or if the claimant withdraws his/her claim as provided herein, it shall return to each transferring State all employment and wages thus unused.

\* \* \*

(c)(1) Redeterminations may be made by the paying State in accordance with its law based on additional or corrected information received from any source, including a transferring State, except that such information shall not be used as a basis for changing the paying State if benefits have been paid under the Combined-Wage Claim.

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(d)(1) Except as provided in paragraph (d)(3) of this section, where the claimant files his/her Combined-Wage Claim in the paying State, any protest, request for redetermination or appeal shall be in accordance with the law of such State.

(2) Where the claimant files his/her Combined-Wage Claim in a State other than the paying State, or under the circumstances described in paragraph (d)(3) of this section, any protest, request for redetermination or appeal shall be in accordance with the Interstate Benefit Payment Plan.

(3) To the extent that any protest, request for redetermination or appeal involves a dispute as to the coverage of the employing unit or services in a transferring State, or otherwise involves the amount of employment and wages subject to transfer, the protest, request for redetermination or appeal shall be decided by the transferring State in accordance with its law.

Claimant filed her claim for benefits on October 23, 2022. A regular base year does not include the quarter in which a claim was filed, nor the preceding quarter, but consists of the four quarters prior to that. ORS 657.010(1). Accordingly, claimant's regular base year was the third and fourth quarters of 2021 and the first and second quarters of 2022. However, since claimant's work did not result in wages or hours during those four quarters sufficient to establish a monetarily valid claim, the Department determined that claimant had a monetarily valid claim using the alternate base year. The alternate base year consists of the four quarters preceding the quarter in which a claim is filed. ORS 657.173. Claimant's alternate base year is therefore the fourth quarter of 2021, and the first, second and third quarters of 2022.

**GDNR wages.** The Department was required under 20 CFR § 616.8(a) to request the transfer of claimant's employment and wages in all States during the claim's base period. Though claimant presented paystubs establishing that she worked for GDNR and was paid \$452.50 during the base period, those wages have not been transferred from Georgia to the combined-wage claim in Oregon. The Department's representative testified that the GDNR wages were not transferred because, "I don't see anything that they – that they were requested." Transcript at 9. The Department did not mention the GDNR wages specifically in their request for reconsideration, but argued that 20 CFR § 616.8(d)(3) precluded the Department from being ordered to add those wages to claimant's WPBR as a redetermination authorized under subsection (c)(1). Department's Request for Reconsideration at 1. The Department reasoned that because claimant's request for redetermination and subsequent appeal involve "the amount of employment and wages subject to transfer," such wages may only be determined or redetermined by Georgia as the transferring state. Department's Request for Reconsideration at 1. The Department's assertion is correct that subsection (d)(3) prohibits such an order, or the inclusion of GDNR wages in the WPBR, absent the transfer of those wages from Georgia. However, § 616.8(a) required that the Department *request* transfer of the GDNR wages from Georgia, which the record shows the Department has thus far failed to do. Accordingly, the Department must request the transfer of GDNR wages, and issue a new WPBR which, if the wages are transferred, includes those wages.

**USDA wages.** Similarly, the Department argued, pursuant to 20 CFR § 616.8(d)(3), that wages paid by USDA were subject to transfer and therefore could not be modified in the WPBR based on additional evidence (claimant’s paystubs) since the wages are the subject of a redetermination or appeal in Oregon. Department’s Request for Reconsideration at 1. The Department’s request asserted that, “[Georgia] has responded to Oregon multiple times to advise that no wages were reported by the federal employer [USDA] and consequently there is nothing to transfer.” Department’s Request for Reconsideration at 1. The Department representative testified, “[O]ne of our compliance specialists went ahead and – because they’re the ones that receive. . . the federal wages. . . they go ahead and – and set ‘em on the – on the claim, and so what happens is they. . . resend another 934 form to the Department of Agricultural [sic], and it looks like we got an addition of \$774.00 for the Department of – of Agricultural.” Transcript at 11. “[E]ven we got an addition – we put an addition \$774.00 from the Department of Agricultural, and the weekly benefit amount didn’t change.” Transcript at 10-11. This testimony, along with the inclusion of some of the USDA wages in the November 14, 2022 amended WPBR, show that, more likely than not, the USDA wage information was obtained by the Department directly from USDA, and therefore the wages were not subject to transfer from Georgia as the Department asserted on reconsideration. Accordingly, 20 CFR § 616.8(d)(3) does not prohibit Oregon from redetermining the amount of USDA wages.

Under 20 CFR 616.8(c)(1), Oregon may rely on “additional or corrected information received from any source” in redetermining claimant’s USDA wages. Claimant submitted into evidence her final paystub from USDA, indicating she earned \$10,064.92 during 2022.<sup>2</sup> Exhibit 2 at 2. The paystub also indicated that \$644.76 of this amount was paid to claimant on October 20, 2022, outside of claimant’s alternate base period, which ended on September 30, 2022. Exhibit 2 at 2.

Under OAR 471-030-0010 (January 11, 2018), “[f]or 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).” Therefore, the \$644.76 that was paid after September 30, 2022 cannot be assigned to the third quarter of 2022 and are excluded from claimant’s alternate base period. Of the remaining \$9,420.25 earned in 2022, \$1,241.76 was assigned to the second quarter of 2022 based on USDA’s report to the Department. Exhibit 2 at 6. Accordingly, the balance of \$8,178.49 is properly assigned to the third quarter of 2022. Because the amended November 14, 2022 WPBR listed only \$7,504.80 in USDA wages for that quarter, claimant is entitled to a redetermination of the WPBR that shows \$8,178.49 in USDA wages for the third quarter of 2022.

Claimant also contended at hearing that her earnings from self-employment during the alternate base year should be included in the WPBR. However, claimant’s self-employment did not constitute covered “employment,” because it was not service to an “employer,” as those terms are defined in ORS 657.025 and 657.015, respectively. Therefore, the Department correctly excluded those profits from the WPBR and need not consider them in the redetermination.

For these reasons, claimant is entitled to a redetermined WPBR. This WPBR must modify claimant’s third quarter of 2022 USDA wages to \$8,178.49, and should be issued after the transfer of claimant’s GDNR wages have been requested from Georgia and a response received.

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<sup>2</sup> A \$500 uniform reimbursement was included in “year-to-date” earnings, but was excluded from the \$10,064.92 total because it was not earned in “service for an employer” and therefore was not earned from “employment” as ORS 657.025 defines that term.

Claimant should note that if Georgia does not transfer the GDNR wages to Oregon, she may appeal that decision with Georgia in accordance with that state's laws. Claimant should further note that because ORS 657.150(4)(a) sets a claimant's weekly benefit amount at 1.25 percent of their total base year earnings, subject currently to a minimum weekly benefit amount of \$183, **even with the addition of the USDA and GDNR wages at issue, claimant's minimum weekly benefit amount would not increase.**

**DECISION:** The Department's request for reconsideration is allowed. EAB Decision 2023-EAB-0130 is reconsidered. Order No. 23-UI-211623 is modified as outlined above.

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

**DATE of Service: May 9, 2023**

**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.

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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 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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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.