

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0612**

*Affirmed*  
*Late Request for Hearing Allowed*  
*No Claim Redetermination*

**PROCEDURAL HISTORY:** On July 6, 2022, the Oregon Employment Department (the Department) served notice of a Wage and Potential Benefit Report (WPBR) concluding that claimant did not have sufficient hours or earnings in his base year to qualify for a monetarily valid claim. On July 16, 2022, the July 6, 2022 WPBR became final without claimant having filed a request for hearing. On November 5, 2022, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on March 14, 2023 issued Order No. 23-UI-218939, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by March 28, 2023.

On March 27, 2023, claimant filed a timely response to the appellant questionnaire. On April 19, 2023, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 23-UI-218939 was vacated and that a new hearing would be scheduled to determine whether claimant's late request for hearing should be allowed and, if so, the merits of the July 6, 2022 WPBR. On May 3, 2023, ALJ Nyberg conducted a hearing, and on May 11, 2023 issued Order No. 23-UI-224596, allowing claimant's late request for hearing on the July 6, 2022 WPBR and affirming that decision on the merits. On May 28, 2023, claimant filed an application for review of Order No. 23-UI-224596 with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** Claimant filed written arguments on June 5 and 8, 2023. Both of claimant's arguments contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing. 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 arguments to the extent they were based on the record.

Even if EAB had considered the new information contained in claimant's written arguments, however, that new information would not have changed the outcome in this matter. The crux of both of claimant's arguments, in line with his testimony at hearing, was that he performed more than 500 hours of work for

Mainstream Global (the employer) in the second quarter of 2022, whereas the employer had reported that claimant only worked 320 hours during that quarter. To support his assertion, claimant provided copies of four paystubs, with pay periods ranging from April 11 to July 3, 2022. Claimant's June 8, 2023 Written Argument at 2–6. These paystubs show that claimant worked 80 hours in each of the first three pay periods, and used eight hours of paid time off in the final pay period, for a total of 248 hours over those four respective pay periods. Claimant's June 8, 2023 Written Argument at 2–6. Claimant explained that these do not constitute all of the paystubs that he received during his tenure with the employer, but that the missing pay stubs each indicated that he worked 80 hours during those respective pay periods. Claimant's June 8, 2023 Written Argument at 1.

Even assuming that all of the hours shown in the documents attached to the argument are correctly attributed to the second quarter of 2022,<sup>1</sup> the number of hours worked would have amounted to fewer than 500 hours, meaning that claimant still would not have met his burden to show that he performed at least 500 hours of work during his base year. As the order under review explained, claimant bore the burden to show that additional hours or wages should have been added to his base year. Order No. 23-UI-224596 at 4. Because claimant did not offer documentary evidence into the hearing record which contradicts the employer's report of his having worked only 320 hours during the second quarter of 2022, claimant did not meet that burden.

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. 23-UI-224596 is affirmed.

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

**DATE of Service:** July 3, 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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<sup>1</sup> The last paystub, dated July 7, 2022, includes a pay period of June 20, 2022 through July 3, 2022. Claimant's June 8, 2023 Written Argument at 6. It is not clear whether the eight hours of paid time off reported on this paystub should be attributed to the second or third quarter of 2022 (the latter of which does not fall within claimant's base year).



# 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**

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**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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