

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1050

Modified
Request for Hearing Allowed
Weekly Benefit Amount and Maximum Benefit Amount Redetermined

PROCEDURAL HISTORY: On December 29, 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 with a maximum benefit amount of \$1,393. Claimant filed a request for hearing.¹ On August 29, 2023, ALJ Micheletti conducted a hearing, and on August 31, 2023 issued Order No. 23-UI-234721, allowing claimant's request for hearing as timely and modifying the December 29, 2022 amended WPBR by concluding that claimant's weekly benefit amount was \$183 with maximum benefit amount of \$2,073.² On September 18, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the portion of the order under review concluding that claimant's request for hearing was timely is **adopted**. The rest of this decision addresses whether the December 29, 2022, amended WPBA should be redetermined.

WRITTEN ARGUMENT: EAB considered claimant's argument in reaching this decision.

FINDINGS OF FACT: (1) Lewis and Clark College employed claimant as an adjunct professor from January 3, 2022, until May 31, 2022. Claimant was paid on a per-class basis, and during this period of employment earned a total of \$10,300 for teaching two classes. \$100 of these earnings were paid in the fourth quarter of 2021 prior to commencing employment, \$6,120 was paid in the first quarter of 2022,

¹ Order No. 23-UI-234721 concluded that claimant's request for hearing on a previous WPBR applied to the December 29, 2022, amended WPBR, and was therefore timely, as a previous WPBR was superseded on December 29, 2022, while the request was pending. Order No.23-UI-234721 at 3.

² Order No. 23-UI-234721 concluded that claimant qualified for a regular base year with total earnings of \$6,220. Order No. 23-UI-234721 at 5. Pursuant to ORS 657.150 and ORS 657.152, this resulted in a weekly benefit amount of \$183 with a maximum benefit amount, calculated at one-third the total base year earnings and rounded down to the nearest dollar, of \$2,073.

and \$4,080 was paid in the second quarter of 2022. Claimant had no other earnings from the second quarter of 2021 through the second quarter of 2022.

(2) The employer did not track hours worked by claimant. Claimant's employment contract required her to "keep track of your time spent on all aspects of teaching," and to not exceed 40 hours of work per week, or a total of 340 hours per class, without prior written permission. Exhibit 2 at 4. Claimant worked 408 hours during the first quarter of 2022 and recorded those hours contemporaneously. Claimant worked 347 hours during the second quarter of 2022. Claimant worked no other hours from the second quarter of 2021 through the second quarter of 2022.

(3) On July 10, 2022, claimant filed an initial claim for unemployment insurance benefits.

(4) On December 29, 2022, the Department issued an amended WPBR concluding that claimant established a monetarily valid claim using an alternate base year, with a weekly benefit amount of \$183 and maximum benefit amount of \$1,393. These amounts were calculated based on claimant having no earnings or hours worked in the third quarter of 2021 or first quarter of 2022, \$100 in earnings and 173 hours worked in the fourth quarter of 2021, and \$4,080 and 347 hours worked in the second quarter of 2022.

CONCLUSIONS AND REASONS: Claimant's WPBR is redetermined. In the third quarter of 2021, claimant had no earnings and worked no hours; in the fourth quarter of 2021, claimant earned \$100 and worked no hours; in the first quarter of 2022, claimant earned \$6,120 and worked 408 hours; in the second quarter of 2022, claimant earned \$4,080 and worked 347 hours. Claimant established a monetarily valid claim using the alternate base year, with a weekly benefit amount of \$183 and maximum benefit amount of \$3,433.

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.

(3) If the wages paid to an individual are not based upon a fixed period of time or if wages are paid at irregular intervals or in such manner as not to extend regularly over the period of employment, for the purposes of subsections (2) to (5) of this section, the individual's wages shall be allocated in accordance with rules prescribed by the Director of the Employment Department. Such rules shall, insofar as possible, produce results the same as those that would exist if the individual had been paid wages at regular intervals. The director may adopt rules to attribute hours of work to an individual if the individual is not paid on an hourly basis or if the employer does not report the number of hours worked.

(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.

(b) The minimum weekly benefit amount shall be 15 percent (0.1500) of the state average weekly covered wage for the preceding calendar year, effective for any benefit year commencing on and after the week that includes July 4, 1975, and the week that includes each July 4 thereafter.

* * *

(d) All weekly benefit amounts, if not a multiple of \$1, shall be computed to the next lower multiple of \$1.

(e) For the purposes of this subsection, the state average weekly covered wage means an amount determined by the Employment Department by dividing the total wages paid by subject employers during the year by 52 times the average monthly employment reported by subject employers for the year.

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

* * *

ORS 657.173 provides, in relevant part:

(1) (a) Notwithstanding ORS 657.010 (1), in the case of an individual who is not eligible for benefits under ORS 657.150 (2) using the definition in ORS 657.010 (1), "base year" means the last four completed calendar quarters preceding the benefit year, if use of this alternate definition of "base year" makes the individual eligible for benefits under ORS 657.150 (2).

* * *

The Department contended at hearing that the December 29, 2022, amended WPBR should be redetermined to reflect that claimant had no earnings and worked no hours in the second and third quarters of 2021, \$100 in earnings and worked no hours in the fourth quarter of 2021, \$6,120 in earnings and worked 520 hours in the first quarter of 2022, and \$4,080 in earnings and worked 347 hours in the second quarter of 2022. Transcript at 14-15. The order under review concluded that these amounts accurately reflected claimant's earnings and hours worked for these quarters, and that the WPBR should be redetermined accordingly. Order No. 23-UI-234721 at 4-5. The record supports this conclusion as to the earnings, but not as to the hours worked, and the WPBR must be redetermined on that basis.

At hearing, claimant agreed with the Department's proposed redetermination of the wages and hours at issue for the second quarter of 2021 through the second quarter of 2022, except for the number of hours worked in the first quarter of 2022. Transcript at 24-25. The Department's representatives asserted that claimant worked 520 hours in the first quarter of 2022 because that number was reported to the Department by the employer. Transcript at 26. A Department representative explained that employers often report 520 hours per quarter as the number of hours worked for full-time salaried employees, regardless of the actual number of hours worked, because the employer may not have recorded the actual number of hours worked.³ Transcript at 27. For this reason, more likely than not, the employer's report of 520 was only an estimate and did not reflect the actual number of hours worked by claimant in the first quarter of 2022.

In contrast to this estimate, claimant testified that she recorded all hours worked, as required by the employer, and that her records showed that she worked 408 hours during the quarter. Transcript at 29. Because the employment contract placed the responsibility on claimant to record the number of hours worked, and only required that she report that number to the employer in the event she worked more than a certain number of hours, it is reasonable to infer that claimant had greater knowledge than the employer and, in turn, the Department, as to how many hours she worked. Therefore, more likely than not, claimant worked 408 hours during the first quarter of 2022, and the facts have been found accordingly.

ORS 657.010 defines the "base year" as "the first four of the last five completed calendar quarters preceding the benefit year." As claimant filed her claim on July 10, 2022, her benefit year began in the third quarter of 2022. Thus, her regular base year would consist of the second, third, and fourth quarters of 2021 and the first quarter of 2022. During this period, claimant earned \$100 in the fourth quarter of 2021 and \$6,120 in the first quarter of 2022. Therefore, her highest quarter wages were \$6,120; one and one-half times her highest quarter wages equaled \$9,180; and her total base year wages were \$6,220. Because ORS 657.150(2)(a)(A) requires that a claimant "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" to qualify for benefits, and claimant's total base year wages did not exceed one and one-half times the highest quarter wages, she did not qualify for benefits using the regular base year on the basis of earnings. Further, because claimant worked only 408 hours during the regular base year, claimant also failed to qualify for benefits under ORS 657.150(2)(b), which provides that, "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." Claimant therefore did not qualify for benefits under any method using the regular base year.

³ 40 hours per week x 13 weeks per quarter = 520 hours per quarter

However, claimant qualified for benefits using the alternate base year. Because claimant did not qualify for benefits using the regular benefit year, ORS 657.173(1)(a) allowed her to qualify under an alternate base year consisting of “the last four completed calendar quarters preceding the benefit year,” which were the third and fourth quarters of 2021 and the first and second quarters of 2022. Claimant earned \$100 in the fourth quarter of 2021, \$6,120 in the first quarter of 2022, and \$4,080 in the second quarter of 2022. Therefore, her highest quarter wages were \$6,120; one and one-half times her highest quarter wages equaled \$9,180; and her total alternate base year wages were \$10,300. Because claimant’s total alternate base year wages exceeded one and one-half times her highest quarter wages, she qualified for benefits under ORS 657.150(2)(a) using the alternate base year. Claimant’s weekly benefit amount was \$183 because 1.25 percent of her total alternate base year wages equaled \$128.75, which is less than the applicable minimum weekly benefit amount of \$183 established under ORS 657.150(4)(b). Pursuant to OAR 657.150(5), claimant’s maximum benefit amount was \$3,433, one-third of the total alternate base year wages rounded down to the nearest dollar, because that amount is less than 26 times her weekly benefit amount.⁴

For these reasons, claimant’s WPBR is redetermined. In the third quarter of 2021, claimant had no earnings and worked no hours; in the fourth quarter of 2021, claimant earned \$100 and worked no hours; in the first quarter of 2022, claimant earned \$6,120 and worked 408 hours; in the second quarter of 2022, claimant earned \$4,080 and worked 347 hours. Claimant established a monetarily valid claim using the alternate base year with a weekly benefit amount of \$183 and maximum benefit amount of \$3,433.

DECISION: Order No. 23-UI-234721 is modified, as outlined above.

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

DATE of Service: October 31, 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. 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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⁴ $\$10,300 / 3 = \$3,433.33$; $\$183 \times 26 = \$4,758$



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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