

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-1079

Affirmed
Retirement Benefits Deductible

PROCEDURAL HISTORY: On May 23, 2023, the Oregon Employment Department (the Department) issued an administrative decision concluding that claimant had been receiving retirement pay that would reduce his weekly benefit amount by \$357 for the weeks including May 7, 2023 through May 20, 2023 (weeks 19-23 through 20-23) and until the reason for the deduction in benefits had ended (decision # 110605). Claimant filed a timely request for hearing. On August 1, 2023, ALJ L. Lee conducted a hearing at which the employer failed to appear, and on August 9, 2023 issued Order No. 23-UI-232740, affirming decision # 110605. On August 14, 2023, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On May 7, 2023, claimant filed an initial claim for unemployment insurance benefits. The Department determined that the claim was monetarily valid with a weekly benefit amount of \$635 and a base year of January 1, 2022 through December 31, 2022. Claimant claimed benefits for the weeks including May 7, 2023 through July 29, 2023 (weeks 19-23 through 30-23).

(2) During a portion of the established base year, Southland Industries, Inc. employed claimant. Claimant was a member of the Plumbing and Pipefitters Union Local 290 at that time. The union and the employer had an agreement regarding wages payable to its members, including claimant. A person holding claimant's position with the employer must be paid \$54.92 per hour as base wages, and \$36.60 per hour must be paid to the union on the employee's behalf to provide for benefits and union dues.¹

(3) The union membership decided yearly, by vote, how to apportion the amounts received by the union from employers on behalf of their members. For claimant's position, \$14.71 per hour was paid to a local pension fund, and \$1.51 per hour to a national pension fund, out of the \$36.60 per hour sent to the union on claimant's behalf. The pension funds allocated this \$16.22 to an individual account for claimant in

¹ These amounts, and other amounts referenced in this decision taken from Exhibit 1 at 7, are effective for the period April 1, 2023 through March 31, 2024. It can be inferred that these amounts may have differed marginally during claimant's 2022 employment.

which he could select from various investment options to attempt to secure higher returns. The pension funds are operated by a trust set up by the union and are outside of the control of the employer.

(4) In May 2023, claimant received a payment of \$1,546 from the union pension funds and anticipated receiving such monthly payments in the future. When pro-rated on a weekly basis, the payments amount to \$357.²

CONCLUSIONS AND REASONS: Claimant's weekly benefit amount is subject to a deduction of \$357 for pension benefits.

ORS 657.205 provides:

(1) Subject to the provisions of subsections (2) to (5) of this section, an individual is disqualified for benefits for any week with respect to which the individual is receiving, will receive, or has received a governmental or other pension, retirement or retired pay, annuity, or other similar periodic payment based on the previous work of the individual, if payment is received under a plan maintained or contributed to by a base year employer of the individual.

(2) In determining disqualification for any week under subsection (1) of this section, if the remuneration and payments referred to in subsection (1) of this section cover a period greater than and include such week, a pro rata share of such remuneration and payments shall be apportioned to such week or weeks. Except as provided in subsection (3) of this section, such payments made in a lump sum upon separation or in weekly or other installments shall be considered as payments with respect to weeks following separation without regard to the existence or lack thereof of an employee-employer relationship during the weeks such pay is allocated pursuant to rules of the Director of the Employment Department.

(3) An individual is not disqualified for benefits and the director may not reduce benefits under this section to an individual who:

(a) If otherwise eligible, is entitled to benefits for any week;

(b) Is a dislocated worker who has been terminated as a result of any permanent closure of or any substantial layoff at a plant, facility or enterprise; and

(c) Elects to receive a payment referred to in subsection (1) of this section in a lump sum.

(4) If payments referred to in subsection (1) of this section are being received by an individual under the federal Social Security Act, the director shall take into account the individual's contribution and make no reduction in the weekly benefit amount.

(5) If under this section the remuneration and payments, or the pro rata share thereof, in any week are less than the benefits which would otherwise be due under this chapter for such week,

² \$1,546 multiplied by 12 months, divided by 52 weeks, equals \$357 per week when rounded to the nearest dollar.

such individual is entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration and payments.

Claimant received periodic payments from a pension based on his previous work for a base year employer, which amount to \$357 when apportioned on a weekly basis. Claimant did not dispute that his work for the employer during the base period caused the employer to pay money to his union, which was deposited in his pension accounts, and ultimately resulted in these payments. Claimant did not assert, and the record does not show, that an exception in ORS 657.205(3) or (4) is applicable to the payments. Instead, claimant contended that the pension plans under which the payments were received were not “maintained or contributed to” by the employer, as required for the payments to be deductible from benefits pursuant to ORS 657.205. The record supports that the union was entirely responsible for the management of the pension plans, and that the employer had no say in the operation or selection of the plans. The employer’s involvement in the pension was limited to paying \$16.22 for each hour worked, which was ultimately deposited into claimant’s account by sending that money to the union. Claimant posited that because the \$16.22 were his wages pursuant to the union contract, the employer’s remittance of this amount to the union did not constitute the employer “maintain[ing] or contribut[ing]” to the plan.

The term “maintained or contributed to” is not defined in ORS chapter 657. The task in interpreting a statute is to discern the intent of the legislature. *PGE v. Bureau of Labor and Industries*, 317 Or. 606, 610, 859 P.2d 1143 (1993). The Oregon Supreme Court has held that the purpose of ORS 657.205 is to prevent “double-dipping,” meaning to allow a claimant to collect unemployment insurance benefits and pension benefits at the same time based on the same work. *McKean-Coffman v. Employment Div.*, 312 Or 543, 824 P2d 410, 415 (1992). To hold that the contributions made to claimant’s pension account based on his work for the employer during the base period did not constitute the employer “maintain[ing] or contribut[ing] to” the plan would allow claimant to “double-dip” and thereby afford that term a meaning contrary to the legislative intent of the statute. The analysis of whether the employer “maintained or contributed to” the plan must therefore be governed by this legislative intent.

The Department’s stance with regard to pension arrangements between employers and unions, such as this one, is reflected in a policy document that states, “If a union maintains a plan, any base year employment (for one or more employers) while a member of this union makes the pension deductible if all other conditions are met. . . Some union members may receive two-part pensions. One will be based on the work that the individual has performed and is dispersed [*sic*] by the union. The person’s employers contributed to/maintained the pension. The other part is strictly from the person’s union dues. This second part is not deductible since the person chose (voluntarily or not) to belong to the union.” Unemployment Benefit Manual Chapter 630 (March 14, 2005). The plans at issue appear to be funded entirely by employers remitting contributions to the union that the employee is required to make and the employer is required to remit. The contributions are based strictly on the work performed by the employees. These aspects of the plans support the Department’s contention that the employers are maintaining or contributing to the plans.

The record suggests that claimant could not, on an individual basis, opt out of the employer’s payments to the union for deposits into his pension accounts, and instead receive the equivalent amount in cash. Though claimant nominally received a wage of \$91.57 per hour from the employer under the union contract, he only had the option to receive \$54.92 of that as pay. Claimant had no individual control over

the disposition of the remaining \$36.60, which pursuant to the agreement between the employer and the union was paid directly to the union, \$16.22 of which was used directly to fund claimant's pension account. The designation of the \$16.22 per hour as wages by the employer and the union did not alter that the employer, and not claimant, was the source of those funds, as they passed directly to the union and into claimant's pension plan account without the possibility of intervention by claimant. Accordingly, claimant did not fund his pension plan accounts through voluntary union dues or voluntary contributions from his wages or other sources. It was therefore the employer, rather than claimant, who funded the pension accounts based on claimant's work, thereby "maintaining or contributing to" the plans. Payments from the plans to claimant therefore fall under the scope of ORS 657.205(1) and are deductible from benefits.

Claimant's weekly benefit amount is \$635. Because claimant is receiving payment from a pension in the pro rata amount of \$357 per week based on his previous work, and the payments are received under a plan maintained or contributed to by a base year employer, claimant's unemployment insurance benefits are subject to a deduction in the amount of \$357 per week for the weeks including May 7, 2023 through May 20, 2023 (weeks 19-23 through 20-23) and until the reason for the deduction in benefits ends.

DECISION: Order No. 23-UI-232740 is affirmed.

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

DATE of Service: October 4, 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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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.

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