

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311



*Affirmed ~ Confirmada
Ineligible ~ No Elegible*

PROCEDURAL HISTORY: On January 28, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not eligible to receive unemployment insurance benefits for the benefit year ending April 3, 2021 (BYE 13-21) because claimant's base-year wages for that benefit year were based on work he performed while not legally authorized to work in the United States (decision # 74930). Claimant filed a timely request for hearing. On October 3, 2023, ALJ Lucas conducted a hearing that was interpreted in Spanish, and on October 10, 2023, issued Order No. 23-UI-238062, affirming decision # 74930. On October 26, 2023, claimant filed an application for review of Order No. 23-UI-238062 with the Employment Appeals Board (EAB).

HISTORIA PROCESAL: *El 28 de enero de 2021, el Departamento de Empleo de Oregon (el Departamento) envi6 una decisi6n administrativa que concluye que el reclamante no era elegible para recibir beneficios del seguro de desempleo para el a6o de beneficios que finaliza el 3 de abril de 2021 (BYE 13-21) porque los salarios del a6o base del reclamante para ese a6o de beneficios se basaron en el trabajo que realiz6 mientras no estaba legalmente autorizado para trabajar en los Estados Unidos (decisi6n # 74930). El reclamante present6 una solicitud de audiencia. El 3 de octubre de 2023, ALJ Lucas llev6 a cabo una audiencia que fue interpretada en espa6ol, y el 10 de octubre de 2023, emiti6 la Orden No. 23-UI-238062, confirmando la decisi6n # 74930. El 26 de octubre de 2023, el reclamante present6 una solicitud de revisi6n de la Orden No. 23-UI-238062 ante la Junta de Apelaciones de Empleo (EAB).*

FINDINGS OF FACT: (1) Claimant started working for an employer in approximately 2017. Claimant was not legally authorized to work in the United States at that time.

(2) On March 17, 2020, claimant became legally authorized to work in the United States. On May 11, 2020, claimant became a permanent resident of the United States.

(3) On May 15, 2020, claimant filed an initial claim for unemployment insurance benefits. The Department backdated the claim to the week of March 29, 2020 through April 4, 2020 (week 14-20), and determined that claimant had a monetarily valid claim with a weekly benefit amount of \$401.

(4) Claimant’s base year for this benefit year was the first, second, third, and fourth calendar quarters of 2019 (January 1, 2019 through December 31, 2019). Claimant’s reported wages and hours worked for the employer during those calendar quarters were as follows:

Quarter	Wages	Hours
1 st Quarter 2019	\$6,982.03	399
2 nd Quarter 2019	\$8,824.71	489
3 rd Quarter 2019	\$9,847.61	553
4 th Quarter 2019	\$6,710.02	370

Additionally, claimant earned \$6,710.02, and worked 370 hours, during the first quarter of 2020 (January 1, 2020 through March 31, 2020). Claimant’s wages from the first quarter of 2020 were not part of claimant’s base year.

(5) Claimant claimed, and was paid, benefits for the weeks of March 29, 2020 through January 23, 2021 (weeks 14-20 through 03-21) on this benefit year. The Department erroneously paid claimant these benefits without first determining whether he was authorized to work in the United States. After paying claimant benefits for those weeks, the Department determined that claimant had not been authorized to work in the United States during his base year, and that claimant’s base year wages therefore could not be used to pay him benefits.

(6) On or around January 15, 2021, claimant filed an initial claim for Pandemic Unemployment Assistance (PUA) benefits. On January 19, 2021, the Department issued an administrative decision concluding that claimant was not eligible for PUA benefits.

CONCLUSIONS AND REASONS: Claimant’s wages earned prior to his legal authorization to work in the United States cannot be used to pay him benefits for BYE 13-21, and claimant therefore is not eligible for benefits claimed during that benefit year.

CONCLUSIONES Y RAZONES: Los salarios del reclamante ganados antes de su autorización legal para trabajar en los Estados Unidos no se pueden usar para pagarle beneficios para BYE 13-21 y, por lo tanto, el reclamante no es elegible para los beneficios reclamados durante ese año de beneficios.

ORS 657.010(1) defines “Base year” as the first four of the last five completed calendar quarters preceding the benefit year.

ORS 657.150 provides, in relevant part:

* * *

(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.

* * *

ORS 657.173(1)(a) provides, "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)."

ORS 657.184 provides, "Benefits shall not be paid on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted to the United States for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed, including an alien who was lawfully present in the United States as a result of the application of the provisions of section 212(d)(5) of the Immigration and Nationality Act."

Based upon wages paid to claimant in his base year of January 1, 2019 through December 31, 2019, the Department determined that claimant had a monetarily valid claim, and subsequently paid him benefits for weeks in 2020 and 2021. Later, the Department determined that it had erred in paying claimant benefits for those weeks because the wages upon which claimant's claim was based were earned before claimant was legally authorized to work in the United States.

The Department's later determination here, as affirmed by the order under review, is correct. Under ORS 657.184, claimant cannot be paid benefits based on wages he earned while he was not authorized to work in the United States. As claimant did not become so authorized until March 2020, any wages that claimant earned prior to that date, including all his 2019 wages, cannot be used as a basis for payment of benefits.

Furthermore, claimant cannot qualify for benefits using an alternate base year (ABY). At hearing, the Department's witness testified that the ABY provisions under ORS 657.173 did not apply to claimant's circumstances because, notwithstanding the issue under ORS 657.184, claimant had sufficient wages in his regular base year to qualify for benefits. Transcript at 5. It is not clear what authority the Department's witness relied upon in offering this testimony. Regardless, even if claimant did *not* have sufficient wages in his regular base year, claimant still would not be eligible for benefits using an alternate base year.

Because claimant filed his initial claim in May 2020, an alternate base year for the claim would be based on wages from the second quarter of 2019 through the first quarter of 2020 (April 1, 2019 through March 31, 2020). As explained above, none of claimant's wages from 2019 can be used because he was not authorized to work in the United States when he earned them. Given that claimant became authorized to work within the last two weeks of the first quarter of 2020, it is unlikely that all the wages reported for that quarter were earned while claimant was authorized to work. Even if they were, however, claimant could not qualify for benefits under an alternate base year using that quarter's wages alone.

Claimant only had useable wages in one of the four calendar quarters in his alternate base year. Therefore, claimant did not earn total base-year wages that equaled one and one-half times the wages in the highest quarter of the base year, and cannot qualify under ORS 657.150(2)(a).¹ Similarly, because claimant did not work 500 hours or more during that quarter, he cannot qualify under ORS 657.150(2)(b). Claimant therefore could not form a valid claim, using an alternate base year, based on the wages he earned while authorized to work in the United States.

For the above reasons, claimant's wages earned in 2019 and the first quarter of 2020 cannot be used to pay him benefits.

DECISION: Order No. 23-UI-238062 is affirmed. *La Orden de la Audiencia 23-UI-238062 queda confirmada.*

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

DATE of Service: December 15, 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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NOTA: *Usted puede apelar esta decisión presentando una solicitud de revisión judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) dentro de los 30 días siguientes a la fecha de notificación indicada arriba. Vea ORS 657.282. Para obtener formularios e información, puede escribir*

¹ In other words, qualification under ORS 657.150(2)(a) requires, among other things, earnings in two or more separate calendar quarters during the base year.

a la Corte de Apelaciones de Oregon, Sección de Registros (Oregon Court of Appeals/Records Section), 1163 State Street, Salem, Oregon 97310 o visite el sitio web en courts.oregon.gov. En este sitio web, hay información disponible en español.

Por favor, ayúdenos mejorar nuestros servicios completando un formulario de encuesta sobre nuestro servicio de atención al cliente. *Para llenar este formulario, puede visitar <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. Puede acceder a la encuesta usando una computadora, tableta, o teléfono inteligente. Si no puede llenar el formulario sobre el internet, puede comunicarse con nuestra oficina para una copia impresa de la encuesta.*



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 الاستئناف 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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