

**EMPLOYMENT APPEALS BOARD DECISION**  
**2024-EAB-0074**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On November 17, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged, but not for misconduct, and therefore was not disqualified from receiving unemployment insurance benefits based on the work separation (decision # 121213). The employer filed a timely request for hearing. On January 2, 2024, ALJ Goodrich conducted a hearing, and on January 3, 2024, issued Order No. 24-UI-244658, affirming decision # 121213. On January 15, 2024, the employer filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** The employer did not declare that they provided a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond the employer’s reasonable control prevented them from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

Even if EAB considered the employer’s written argument, the outcome in this matter would not change. As the employer noted in their argument, the reason for their appeal was “not on the matter of misconduct but because of the company that should be responsible.” Employer’s Written Argument at 1. This echoed the employer’s motion to dismiss, which suggested that “[c]laimant’s claim for unemployment benefits be dismissed for lack of jurisdiction” because claimant “at all times during her employment with [the employer] worked in Oklahoma not Oregon,” and because the employer “has never had employees in Oregon, does not run its business from Oregon, and has never paid unemployment taxes to the state of Oregon.” Employer’s Motion to Dismiss at 2–3.

As the order under review concluded, the employer’s arguments here do not show that the Department lacked jurisdiction to administer claimant’s claim, or that claimant’s claim should be “dismissed.” Order No. 24-UI-244658 at 2.

ORS 657.150 governs monetary eligibility for unemployment insurance benefits in Oregon, and allows an individual to qualify for a monetarily-valid claim if they have sufficient wages from subject employment in their “base year,” which is a period of calendar quarters defined by statute (*see* ORS 657.010(1)). Broadly, and subject to specific exclusions, an employer is subject to unemployment tax in Oregon if they are an “employing unit” under ORS 657.020. For purposes of this matter, that means that the employer is “[a]ny individual or type of organization, including any partnership, association, limited liability company, limited liability partnership, trust, estate, joint stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or successor thereof, or the legal representative of a deceased person, **who has or had in its employ one or more individuals performing services for it within this state.**” ORS 657.020(1) (emphasis added). Thus, for an employer to be considered a base-year employer who could potentially be charged by Oregon for benefits paid to an individual, that employer must have contributed wages to the individual’s base year *and* must have had individuals performing services for them within Oregon. Although chargeability to the employer in this matter is outside the scope of this appeal, the record suggests that the employer is unlikely to be charged for any benefits paid to claimant by Oregon because they were not one of claimant’s base-year employers.<sup>1</sup>

The fact that the employer does not appear to be an “employing unit” subject to unemployment insurance tax in Oregon does not, however, mean that claimant cannot monetarily qualify for benefits in Oregon. Under ORS 657.035, “employment” (as defined under 657.030) for a subject employer can include a number of different circumstances in which the individual is not physically located in Oregon. While claimant’s monetary eligibility for benefits is also not the subject of this appeal, the record suggests that claimant had base-year wages from an employer who operated in Oregon. Therefore, the fact that the employer in *this* matter is not likely to be subject to Oregon unemployment insurance taxes, or a contributor of base-year wages, does not mean that claimant cannot monetarily qualify for a claim in Oregon.

Finally, the above notwithstanding, ORS 657.176 requires *non-monetary* disqualification from benefits under certain circumstances, such as a discharge for misconduct connected with work. Unlike the monetary eligibility considerations discussed above, disqualifications under ORS 657.176 can occur with employers who are neither base-year employers nor even employers subject to unemployment insurance tax in Oregon. The inquiry necessary to determine whether claimant should have been disqualified from benefits due to her separation from the employer in this matter was therefore the proper subject of this appeal, regardless of the employer’s location or status, or claimant’s location while she worked for the employer.

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. 24-UI-244658 is affirmed.

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

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<sup>1</sup> *See also* ORS 657.471. To the extent that the employer *is* charged in relation to claimant’s Oregon benefits, the Department will notify the employer of such charges or potential charges on a separately appealable document, and the employer may at that time pursue an appeal on that issue.

**DATE of Service: February 21, 2024**

**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**

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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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