

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0207

Affirmed
Ineligible for PEUC Weeks 14-20 through 27-20

PROCEDURAL HISTORY: On July 27, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was ineligible to receive Pandemic Emergency Unemployment Compensation (PEUC) benefits for the weeks of March 29, 2020 through July 4, 2020 (weeks 14-20 through 27-20) (decision # 152330). On August 16, 2021, decision # 152330 became final without claimant having filed a request for hearing. On October 31, 2022, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on March 9, 2023 issued Order No. 23-UI-218471, 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 23, 2023. On March 23, 2023, claimant filed a timely response to the appellant questionnaire. On January 22, 2024, the Office of Administrative Hearings (OAH) mailed a letter to claimant stating that Order No. 23-UI-218471 was vacated and that a hearing would be scheduled to determine whether claimant's late request for hearing should be allowed and, if so, the merits of decision # 152330. On February 8, 2024, ALJ Janzen conducted a hearing, and on February 13, 2024 issued Order No. 24-UI-247943, affirming decision # 152330.¹ On February 25, 2024, claimant filed an application for review of Order No. 24-UI-247943 with the Employment Appeals Board (EAB).

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is necessary to complete the record and consists of two documents issued by Wyoming Department of Workforce Services. The evidence has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the exhibit will remain in the record.

WRITTEN ARGUMENT: 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

¹ Order No. 24-UI-247943 amended a previously issued order to correct a typographical error.

prevented him from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090, EAB considered only information received into evidence at the hearing when reaching this decision, except for the documents admitted as EAB Exhibit 1 deemed necessary to complete the record. EAB considered claimant's arguments to the extent they were based on the record.

EAB considered the entire hearing record. EAB agrees with the portion of Order No. 24-UI-247943 allowing claimant's late request for hearing. Pursuant to ORS 657.275(2), that portion of Order No. 24-UI-247943 is **adopted**. The rest of this decision addresses claimant's eligibility for PEUC benefits.

FINDINGS OF FACT: (1) From May 20, 2019 through July 22, 2019, claimant worked for an employer in Wyoming subject to the unemployment insurance laws of that state. Claimant earned \$2,610 and \$2,172 in the second and third quarters of 2019, respectively, from this employment.

(2) On July 24, 2019, claimant filed an initial claim for benefits in Oregon. The claim was determined to be monetarily valid for regular unemployment insurance (regular UI) benefits with a weekly benefit amount (WBA) of \$285 and effective date of July 22, 2019. The claim used a regular base year of the second through fourth quarters of 2018 and the first quarter of 2019, and relied only upon wages claimant earned in Oregon. The benefit year on this claim ended July 18, 2020.

(3) During the first quarter of 2020, claimant worked for an Oregon employer and earned \$5,338.22 in wages.²

(4) Upon being paid benefits for the week of March 22, 2020 through March 28, 2020 (week 13-20), claimant exhausted his regular UI benefits for the July 24, 2019 Oregon claim.

(5) Claimant filed continuing claims with Oregon for the weeks of March 29, 2020 through July 4, 2020 (weeks 14-20 through 27-20) and was paid PEUC benefits for those weeks. These are the weeks at issue.

(6) Beginning March 29, 2020, claimant was eligible to receive regular UI benefits from Wyoming based on his work in that state during the second and third quarters of 2019. Had he filed an initial claim in Wyoming with that effective date, he would have been eligible for a WBA of \$104 during each of the weeks at issue and a maximum benefit of \$1,456.

(7) On approximately August 2, 2020, claimant filed an initial claim for benefits in Wyoming. The claim was determined to be monetarily valid for regular UI benefits with a WBA of \$104 and maximum benefit of \$1,456, effective August 2, 2020. EAB Exhibit 1 at 2. The claim used a regular base period of the second through fourth quarters of 2019 and the first quarter of 2020, and relied only upon his Wyoming wages earned in the second and third quarters of 2019. EAB Exhibit 1 at 2.

(8) Claimant filed continuing claims with Wyoming for some or all of the weeks from August 2, 2020 through November 21, 2020 (weeks 32-20 through 47-20³) and was paid regular UI benefits for the

² EAB has taken notice of this fact which is contained in Employment Department records. OAR 471-041-0090(1) (May 13, 2019). Any party that objects to our taking notice of this information must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the noticed fact will remain in the record.

weeks claimed. Claimant exhausted regular UI benefits on his August 2, 2020 Wyoming claim during week 47-20.

CONCLUSIONS AND REASONS: Claimant was not entitled to PEUC benefits for weeks 14-20 through 27-20 because he was eligible to receive regular UI benefits from Wyoming for those weeks.

15 U.S.C. § 9025(a) provides, in relevant part:

(1) Any State which desires to do so may enter into and participate in an agreement under this section with the Secretary of Labor (in this section referred to as the "Secretary"). Any State which is a party to an agreement under this section may, upon providing 30 days' written notice to the Secretary, terminate such agreement.

(2) Any agreement under paragraph (1) shall provide that the State agency of the State will make payments of pandemic emergency unemployment compensation to individuals who-

(A) have exhausted all rights to regular compensation under the State law or under Federal law with respect to a benefit year (excluding any benefit year that ended before July 1, 2019);

(B) have no rights to regular compensation with respect to a week under such law or any other State unemployment compensation law or to compensation under any other Federal law;

(C) are not receiving compensation with respect to such week under the unemployment compensation law of Canada; and

(D) are able to work, available to work, and actively seeking work.

(3) For purposes of paragraph (2)(A), an individual shall be deemed to have exhausted such individual's rights to regular compensation under a State law when-

(A) no payments of regular compensation can be made under such law because such individual has received all regular compensation available to such individual based on employment or wages during such individual's base period; or

(B) such individual's rights to such compensation have been terminated by reason of the expiration of the benefit year with respect to which such rights existed.

* * *

³ All claim week numbers used in this decision are in accordance with Oregon's claim calendar numbering system, which may be different from Wyoming's claim calendar numbering system.

Wyo. Stat. § 27-3-306 provides, in relevant part:

(a) An unemployed individual is eligible for benefits under this article for any week if he:

* * *

(v) Earned wages for insured work in amounts specified by subsection (d) of this section;

* * *

* * *

(d) To qualify under paragraph (a)(v) of this section, an individual shall have earned:

(i) Wages for insured work during his base period of not less than eight percent (8%) of the statewide average annual wage computed under W.S. 27-3-303(a) rounded to the lowest fifty dollars (\$50.00);

* * *

(iii) Wages for insured work of one and four-tenths (1.4) times the high quarter earnings in his base period; and

(iv) Not less than eight (8) times the weekly benefit amount of his current claim for services after the beginning of the next preceding benefit year in which benefits were received. This paragraph applies only if the base period is the first four (4) of the last five (5) completed calendar quarters immediately preceding the first day of the benefit year. Services under this paragraph must be performed in an employer-employee relationship but are not required to qualify as employment under W.S. 27-3-104 through 27-3-108.

* * *

Wyo. Stat. §27-3-102 provides, in relevant part:

(a) Except as otherwise provided, as used in this act:

(i) “Base period” means the first four (4) of the last five (5) completed calendar quarters immediately preceding the first day of an individual’s benefit year or any other twelve (12) month period specified by commission regulation. A calendar quarter used in one (1) base period of a valid claim shall not be used in a subsequent base period. If a combined wage claim under W.S. 27-3-608, the base period is as provided under law of the paying state[.]”

(ii) “Benefit” means a payment to an individual for unemployment under this act;

(iii) “Benefit year” means:

(A) The fifty-two (52) consecutive calendar week period beginning the first week of a claim series established by the filing of a valid initial claim for benefits following the termination of any previously established benefit year;

* * *

(iv) “Calendar quarter” means a period of three (3) consecutive calendar months ending on March 31, June 30, September 30 or December 31[.]

* * *

Claimant exhausted regular UI benefits on his Oregon claim in week 13-20, which ended March 28, 2020. Therefore, pursuant to 15 U.S.C. § 9025(a)(2)(B), claimant’s monetary eligibility for PEUC for the weeks at issue, beginning March 29, 2020 with week 14-20, was dependent on whether he had a right to regular UI benefits under the laws of any other state. The record shows that claimant had a right to regular UI benefits under the laws of Wyoming during the weeks at issue, and therefore was ineligible for PEUC benefits.

Under Wyoming law, had claimant filed a claim for benefits against that state effective March 29, 2020 (week 14-20), such a claim would have had a benefit year beginning in the first quarter of 2020. Therefore, the regular base period under Wyoming law would have consisted of the fourth quarter of 2018 and the first three quarters of 2019. Claimant’s Wyoming wages during the second and third quarters of 2019 totaled \$4,782, and were the only wages available for use on that claim.⁴ Wyoming’s statewide average annual wage computed under W.S. 27-3-303(a) in the first quarter of 2020 was \$4,038.67.⁵ Because claimant’s base period earnings exceeded that amount, they necessarily exceeded eight percent of that amount rounded to the lowest 50 dollars. Claimant’s total base period wages also exceeded 1.4 times the highest quarter wages, which were \$2,610 in the second quarter of 2019.⁶ As to the final monetary eligibility requirement, that wages of at least eight times the WBA were earned after the effective date of the “next preceding benefit year,” there is some ambiguity regarding whether an unexpired benefit year on a claim against another state would qualify as a “next preceding benefit year.” However, even if the July 24, 2019 Oregon claim were considered the next preceding benefit year, claimant’s Oregon wages in the first quarter of 2020 would satisfy the requirement of Wyo. Stat. §27-3-306(d)(iv), as the wages need not be covered wages under Wyoming unemployment insurance law, and the wages exceeded eight times what the Wyoming WBA would have been.⁷ Therefore, more likely than not, claimant would have been monetarily eligible for regular UI benefits in Wyoming effective March 29, 2020 had he filed a claim.

⁴ \$2,610 + \$2,172 = \$4,782.

⁵ <https://dws.wyo.gov/dws-division/labor-standards/resources/statewide-average-monthly-wage/> (retrieved April 4, 2024).

⁶ $1.4 \times \$2,610 = \$3,654$. $\$4,782 > \$3,654$.

⁷ As later determined by Wyoming, the WBA resulting from these base period wages would have been \$104. $\$104 \times 8 = \832 . Claimant’s first quarter 2020 earnings of \$5,338.22 > \$832.

Further supporting this conclusion is the fact that Wyoming ultimately determined that claimant had a monetarily valid claim under their laws using the same base period wages, even though different calendar quarters were used based on the claim having been filed in the third quarter of 2020. *See* EAB Exhibit 1 at 2. It can be inferred from Wyoming's payment of regular UI benefits beginning August 2, 2020, that claimant had no non-monetary determinations that would have rendered him ineligible to receive regular UI benefits during the weeks at issue. Accordingly, the record shows that claimant had the right to regular UI benefits under the laws of Wyoming beginning March 29, 2020 (week 14-20) and continuing through at least July 4, 2020 (week 27-20). Even though claimant and the Department were unaware of claimant's right to Wyoming regular UI benefits at the time, 15 U.S.C. § 9025(a)(2)(B) nonetheless renders claimant ineligible for PEUC benefits during those weeks due to his regular UI entitlement.⁸

For these reasons, claimant was ineligible for PEUC benefits for the weeks of March 29, 2020 through July 4, 2020 (weeks 14-20 through 27-20).

DECISION: Order No. 24-UI-247943 is affirmed.

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

DATE of Service: April 5, 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. 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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⁸ The Department's records suggest that recovery of any overpayment of benefits for the weeks at issue resulting from claimant's PEUC ineligibility has been waived, though claimant may wish to confirm this with the Department.



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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
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