

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



Reversed
No Claim Redetermination

PROCEDURAL HISTORY: On February 5, 2024, the Oregon Employment Department (the Department) served notice of a Wage and Potential Benefit Report (WPBR) concluding that claimant did not have sufficient hours or earnings in her base year to qualify for a monetarily valid unemployment insurance claim. Claimant filed a timely request for hearing. On April 8, 2024, ALJ Lucas conducted a hearing, and on April 11, 2024 issued Order No. 24-UI-252070, reversing the February 5, 2024 WPBR by concluding that claimant was entitled to add \$28,931.20 in wages and 386.61 hours to her base year. On April 22, 2024, the Department filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On January 31, 2024, claimant filed an initial claim for unemployment insurance benefits. The Department determined that, using a base year of October 1, 2022 through September 30, 2023 (fourth quarter 2022 through third quarter 2023), claimant did not have sufficient base-year hours or earnings to qualify for a monetarily valid claim.

(2) From October 2022 until November 7, 2022, claimant worked full time (approximately 40 hours per week) for the Port of Vancouver, Washington. This employer paid claimant a salary of approximately \$10,000 per month. After claimant separated from employment on November 7, 2022, the employer also paid her an additional month's salary as severance pay. Claimant did not perform any additional work during the fourth quarter of 2022 (October 1, 2022 through December 31, 2022).

(3) Claimant did not work during the first quarter of 2023 (January 1, 2023 through March 31, 2023).

(4) During a week in the second quarter of 2023 (between April 1, 2023 and June 30, 2023), claimant performed "freelance" public relations work for a nonprofit organization, earning \$2,000 for 20 hours of work. Transcript at 13.

(5) Claimant did not work during the third quarter of 2023 (July 1, 2023 through September 30, 2023).

(6) During the fourth quarter of 2023 (October 1, 2023 through December 31, 2023), claimant performed “freelance” work for a different organization. Transcript at 30. Claimant performed this work for 10 hours and earned \$1,500. Also, during the fourth quarter of 2023, claimant worked for Robeson Communications, earning a total of approximately \$10,931.20 for 136.61 hours of work.

CONCLUSIONS AND REASONS: Claimant did not have sufficient hours or earnings in her base year to qualify her for a monetarily valid claim, and her request to adjust her claim determination is therefore denied.

ORS 657.010 provides, in relevant part:

(1) “Base year” means the first four of the last five completed calendar quarters preceding the benefit year.

* * *

(3) “Benefit year” means a period of 52 consecutive weeks commencing with the first week with respect to which an individual files an initial valid claim for benefits, and thereafter the 52 consecutive weeks period beginning with the first week with respect to which the individual next files an initial valid claim after the termination of the individual’s last preceding benefit year except that the benefit year shall be 53 weeks if the filing of an initial valid claim would result in overlapping any quarter of the base year of a previously filed initial valid claim.

(4) “Calendar quarter” means the period of three consecutive calendar months ending on March 31, June 30, September 30 or December 31, or the approximate equivalent thereof, as the Director of the Employment Department may, by rule, prescribe.

* * *

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.

* * *

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).

* * *

(2)(a) Except as provided in paragraph (b) of this subsection, the definition of “base year” that applies for the purposes of determining an individual’s eligibility for benefits under ORS 657.150 applies for all purposes under this chapter related to that individual’s claim.

(b) When making a finding under ORS 657.170 (1), “base year” has the meaning given that term in ORS 657.010(1).

* * *

The order under review concluded that claimant is entitled to have added to her claim wages and hours earned between the fourth quarter of 2022 through the fourth quarter of 2023. Order No. 24-UI-252070 at 7–8. The record does not support this conclusion, but instead shows that claimant did not have sufficient hours and earnings, using either her regular base year or alternate base year, to qualify for a monetarily valid claim.

As a preliminary matter, there is uncertainty in the record as to both the amount of some of claimant’s earnings and whether all of claimant’s earnings are subject wages that can be used to qualify claimant for benefits. For instance, regarding her work for the Port of Vancouver, Washington, claimant testified only that she worked from October 2022 through November 7, 2022, and that she had been paid “approximately” \$10,000 per month for this work. Transcript at 10–11. Based on this testimony, the order under review determined that claimant had worked for this employer for *all* of October 2022, performing approximately 200 hours of work, and based its findings of how much claimant earned on that estimate. Order No. 24-UI-252070 at 1–2. Additionally, claimant described the work she performed in the second quarter of 2023, and some of the work she performed in the fourth quarter of 2023, as “freelance,” and the record suggests that this work was performed as an independent contractor.¹ However, the order under review determined that claimant did not perform this work as an independent contractor, and that claimant’s hours and earnings from this work “should be included in claimant’s claim determination.” Order No. 24-UI-252070 at 5.

¹ Earnings from work performed as an independent contractor are not considered wages subject to ORS Chapter 657. See generally ORS 657.040; ORS 670.600; OAR 471-031-0181 (February 1, 2007).

It is not necessary to resolve these issues, however. Even if the facts are construed in the manner most favorable to claimant, by assuming that the amounts of claimant’s earnings, where ambiguous, were the highest amount possible, and by finding all of claimant’s earnings to be subject wages, those wages are still insufficient to monetarily qualify claimant for a valid claim.

Under ORS 657.150(2)(a)(A), in order to monetarily qualify for benefits, an individual must have total base year wages of \$1,000 or more and equal to or in excess of one and one-half times the wages in the highest quarter of the base year. If the individual cannot meet those requirements, they may instead monetarily qualify under ORS 657.150(2)(b) by having worked a minimum of 500 hours in subject employment during the base year. Determining claimant’s base year is a threshold requirement for this analysis.

Under ORS 657.010(2), the “base year” is the first four of the last five completed calendar quarters preceding the benefit year. Because claimant filed her initial claim for benefits in January 2024 (the first quarter of 2024), the last five completed calendar quarters were the fourth quarter of 2022 through the fourth quarter of 2023, and, likewise, the first four of those were the fourth quarter of 2022 through the third quarter of 2023. Thus, the fourth quarter of 2022 through the third quarter of 2023 is claimant’s “regular” base year under ORS 657.010(2).

Under ORS 657.173, if an individual cannot monetarily qualify for benefits using their regular base year under ORS 657.010(2), they may use wages from the *last* four completed calendar quarters to qualify under an alternate base year. Thus, the first through fourth quarters of 2023 constituted claimant’s alternate base year. The order under review did not distinguish between the regular and alternate base years, instead finding that claimant’s wages from all *five* of the last completed calendar quarters preceding her initial claim should be added to her claim. Order No. 24-UI-252070 at 7. This is an error, as an individual may only be monetarily eligible under either their regular base year or, if that is not possible, the alternate base year.

Claimant’s approximate earnings and hours for all five of the calendar quarters at issue are as follows:

Quarter	Employer	Earnings	Hours
04/2022	Port of Vancouver, Washington	\$22,500 ²	200
01/2023	N/A	N/A	N/A
02/2023	Freelance work	\$2,000	20
03/2023	N/A	N/A	N/A
04/2023	Freelance work	\$1,500	10
	Robeson Communications	\$10,931.20 ³	136.61

² Based on the order under review’s estimate of claimant’s salary for October through November 2022, plus claimant’s severance pay after she separated from this employer. *See* Order No. 24-UI-252070 at 1–2; Transcript at 11–12. Claimant did not explicitly testify as to when the severance pay was paid to her, which is relevant because, under OAR 471-030-0010 (January 11, 2018), “for purposes of ORS 657.150(2) and (4) wages shall be assigned to the calendar quarter in which they are paid, in the same manner that taxes are payable pursuant to OAR 471-031-0070(1).” Nevertheless, because claimant separated from that employer with nearly two months of the calendar quarter remaining, it is more likely than not that the severance was paid to her in the same calendar quarter (fourth quarter of 2022), and the facts have been found accordingly.

³ The accuracy of this figure is in question, as it appears to be an amalgamation of the Department’s testimony regarding what this employer reported claimant’s wages to be for this calendar quarter *and* claimant’s testimony regarding the same.

Based on the above, claimant cannot monetarily qualify for benefits using her regular base year. Claimant's total earnings for her regular base year are \$24,500. Claimant's highest earnings in her regular base year were in the fourth quarter of 2022, at \$22,500. One and one half times her high-quarter earnings is \$33,750. As claimant did not earn this amount or more during her regular base year, she cannot qualify under ORS 657.150(2)(a)(A). Likewise, because claimant worked a total of 220 hours during her regular base year, which is less than 500, claimant cannot qualify under ORS 657.150(2)(b).

Similarly, claimant cannot monetarily qualify for benefits using her alternate base year. Claimant's total earnings for her alternate base year are \$14,431.20. Claimant's highest earnings in her alternate base year were in the fourth quarter of 2023, at \$12,431.20. One and a half times her high-quarter earnings is \$18,646.80. As claimant did not earn this amount or more during her alternate base year, she cannot qualify under ORS 657.150(2)(a)(A). Likewise, because claimant worked a total of 166.61 hours during her regular base year, which is less than 500, claimant cannot qualify under ORS 657.150(2)(b).

For the above reasons, claimant did not have sufficient hours or earnings to monetarily qualify for benefits using either her regular or alternate base year, and is therefore not eligible to have wages added to her claim.

DECISION: Order No. 24-UI-252070 is set aside, as outlined above.

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

DATE of Service: June 4, 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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See Transcript at 7, 15. Nevertheless, this figure is accepted because, as noted above, claimant's earnings for purpose of this analysis are assumed to be the highest amount possible under the facts in the record.



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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