

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0119

Modified
Request for Hearing Timely Filed
Base Year Wages Earned in Subject Employment
Claim Redetermination Allowed

PROCEDURAL HISTORY: On April 9, 2024, the Oregon Employment Department (the Department) served notice of a Wage and Potential Benefit Report (WPBR) concluding that claimant had a monetarily valid claim with a base year of January 1, 2023 through December 31, 2023 (decision # L0003567298). Claimant filed a request for hearing. ALJ Kangas considered claimant's request, and on September 4, 2024, issued Order No. 24-UI-264844, dismissing claimant's request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by September 18, 2024. On September 16, 2024, claimant filed a timely response to the appellant questionnaire. On September 30, 2024, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 24-UI-264844 was vacated and that a hearing would be scheduled to determine whether to allow claimant's request for hearing and, if so, the merits of decision # L0003567298. On January 28, 2025, ALJ Christon conducted a hearing, and on February 12, 2025, issued Order No. 25-UI-282872, allowing claimant's request for hearing as timely, and reversing decision # L0003567298 by concluding that claimant did not have a monetarily valid claim for benefits because his wages were not earned in subject employment. On February 19, 2025, claimant filed an application for review of Order No. 25-UI-282872 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 consists of excerpts from the January 15, 2025 notice of hearing, which has been marked as EAB Exhibit 1, and provided to the parties with this decision. Any party that objects to EAB taking notice of this information must send their objection to EAB in writing, stating why they object, within ten days of EAB mailing this decision. OAR 471-041-0090(2). Unless EAB receives and agrees with the objection, the exhibit will remain in the record.

WRITTEN ARGUMENT: Claimant filed written arguments on February 19 and March 3, 2025.

Both of claimant's arguments contained information that was not part of the hearing record and did not show that factors or circumstances beyond his reasonable control prevented him from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), and with the exception of EAB Exhibit 1, EAB considered only information received into evidence at the hearing. EAB considered any parts of claimant's arguments that were based on the hearing record.

Additionally, the Department filed a written argument on February 26, 2025. The Department's written argument contained information that was not part of the hearing record, and pertained to the question of whether claimant's wages at issue in this matter were subject. As explained below, the ALJ lacked jurisdiction to rule on that matter, and the subjectivity of claimant's wages therefore is not at issue here. As such, EAB did not consider the additional information in the Department's written argument because it was not relevant and material, to EAB's determination of whether claimant's claim should be redetermined. *See* ORS 657.275(2) and OAR 471-041-0090(1)(b)(A). EAB considered any parts of the Department's argument that were based on the hearing record.

EAB considered the entire hearing record, including witness testimony and any exhibits admitted as evidence. EAB agrees with the part of Order No. 25-UI-282872 allowing claimant's request for hearing on decision # L0003567298. That part of Order No. 25-UI-282872 is **adopted**. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) On or around April 2, 2023, claimant filed an initial claim for benefits ("the prior benefit year") with an effective date of April 2, 2023. That claim was based on a base year consisting of all four calendar quarters of 2022.

(2) For the fourth quarter of 2022, claimant had reported wages in the amount of \$12,051.20 from Cost Advisors, Inc. ("the employer").

(3) On March 31, 2024, claimant filed an initial claim for benefits ("the current benefit year"). The Department determined that claimant had a monetarily valid claim for benefits, with a weekly benefit amount (WBA) of \$430 and a maximum benefit amount (MBA) of \$11,180. The Department made this determination based on a base year consisting of all four calendar quarters of 2023, with hours and wages from the employer reported as follows:

Quarter	Wages	Hours
1 st Quarter 2023	\$22,232.00	398
2 nd Quarter 2023	\$3,757.60	68
3 rd Quarter 2023	\$1,456.00	26
4 th Quarter 2023	\$7,022.40	126
Total	\$34,468.00	618

Exhibit 7 at 12.

(4) On January 15, 2025, OAH served notice of the hearing in this matter, scheduled for January 28, 2025. The notice stated that the issues to be considered at hearing were:

Whether claimant's claim determination reflects all of the wages or hours worked in subject employment in the base year to which claimant is entitled. (ORS 657.150.) Was the request for

hearing filed within the 10-day time limit; and, if not, is there good cause for extending the limit a reasonable time? (ORS 657.266(5), 657.875, OAR 471-040-0005 and 471-040-0010.)

EAB Exhibit 1 at 1. The notice of hearing also enclosed copies of the statutes and administrative rules relevant to the issues to be addressed at hearing. Regarding the claim determination issue, the following laws and rules were enclosed with the notice of hearing: ORS 657.150; ORS 657.170; OAR 471-030-0023; OAR 471-030-0100; ORS 657.266; OAR 471-030-0010; OAR 471-030-0021; and OAR 471-030-0048. EAB Exhibit 1 at 3–6. The notice of hearing did not indicate that the question of whether claimant’s wages were earned in subject employment, per ORS 657.040 *et. seq.*, would be addressed at hearing, nor were copies of those statutes enclosed with the notice of hearing. Prior to the hearing, the ALJ did not identify the question of whether claimant’s wages were earned in subject employment as an issue to be addressed at hearing, and the parties did not waive their right to notice of that issue being addressed at hearing. The issue was not addressed at hearing, and no testimony was taken on that issue.

CONCLUSIONS AND REASONS: The ALJ lacked jurisdiction to address the subjectivity of claimant’s wages, and the Department’s initial determination that claimant’s base year wages were subject remains undisturbed. Claimant’s base year should be the fourth quarter of 2022 through the third quarter of 2023, and claimant’s claim should be redetermined using that base year, with a WBA of \$493 and an MBA of \$12,818.

Jurisdiction to Address Wage Subjectivity. OAR 471-040-0015(1) (August 1, 2004) states, “To afford all parties a reasonable opportunity for a fair hearing, notice of hearing setting forth the time, date, place, and issue(s) in general shall be personally delivered or mailed at least five days in advance of the hearing to parties or their authorized agents at their last known address as shown by the record of the Director.”

OAR 471-040-0025 (August 1, 2004) states, in relevant part:

(1) The purpose of the hearing is to inquire fully into the matters at issue and to make a decision on the basis of the evidence adduced at the hearing.

* * *

(8) In any hearing, the administrative law judge shall render a decision on the issue and law involved as stated in the notice of hearing. The administrative law judge’s jurisdiction and authority is confined solely to the issue(s) arising under the Employment Department Law. Subject to objection by any party, the administrative law judge may also hear and enter a decision on any issue not previously considered by the authorized representative of the Director and which arose during the hearing. The administrative law judge may continue the hearing or remand the matter to the authorized representative for consideration and action upon such issue(s) under the provisions of ORS 657.265. However, in no event shall the administrative law judge accept jurisdiction of a new issue and proceed with hearing on such issue when an interested party to such new issue has not waived right to notice.

The principal issue to be addressed at the hearing on the merits of decision # L0003567298, as explained on the notice of hearing, was the determination of “whether claimant’s claim determination reflects all

of the wages or hours worked in subject employment in the base year to which claimant is entitled.” EAB Exhibit 1 at 1. At hearing, the ALJ did not propose to take jurisdiction over any additional issues, nor did the parties waive their right to notice on any additional issues. Therefore, the scope of the hearing on the merits of decision # L0003567298 was confined to the determinations of what claimant’s base year should be, and what his benefit amounts should be, based on the wages reported for his base year. Nevertheless, the order under review sidestepped this issue, instead concluding that “the larger issue in this case is whether claimant worked in subject employment during the base year at issue, as required under ORS 657.150(2)(a) for a valid claim[.]” Order No. 25-UI-282872 at 5. The order under review further concluded that claimant’s wages for the base year determined by decision # L0003567298 were not subject wages, explaining, in relevant part:

Claimant serves as the sole corporate officer and director of his corporation. As such, his role in his corporation was not subject employment as defined by ORS 657.044. Because his wages were not earned in subject employment, they cannot be used to support an unemployment insurance claim.

Order No. 25-UI-282872 at 5. Such a determination was outside the scope of the issues noticed for hearing, and the ALJ therefore lacked jurisdiction to rule on this issue under OAR 471-040-0025(8). To be clear, ORS 657.150(2) does require, as discussed further in the following section, a finding that the individual has met a threshold amount of subject wages and/or hours for their base year in order to form a monetarily valid claim for benefits. That finding must therefore be based upon the subject wages reported by the individual’s employer(s) for the base year. However, the determination of whether the wages are, themselves, “subject wages” (i.e., wages that are subject to ORS Chapter 657, and which therefore can be used as the basis for a claim) is an entirely separate analysis. That analysis is governed by separate statutory provisions (ORS 657.040 *et. seq.*) and requires findings of fact not contemplated by ORS 657.150 or any of the other statutes or administrative rules included in the notice of hearing. Thus, because the issue of whether claimant’s wages during the base year were subject wages was not properly noticed, it was not an issue to be addressed at hearing, and ruling on that issue was improper. As such, the conclusion in the order under review that claimant’s wages were not subject is set aside, and the Department’s original conclusion that claimant’s wages *were* subject remains undisturbed.¹

Claim Redetermination. ORS 657.010 states, 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

¹ While the Department did not explicitly state, either at hearing or in decision # L0003567298, that claimant’s base year wages were subject, it can be inferred that the Department made such a determination, as the Department would not have found claimant to have a monetarily valid claim if his wages were not subject.

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.

* * *

OAR 471-030-0005(2) (January 11, 2018) states, “*Except for purposes of computing total base year wages under ORS 657.150(2) and benefit entitlement under ORS 657.150(4), a week is within that calendar quarter which includes the greater part of the week.*” (emphasis added)

ORS 657.150 states, 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.

* * *

(4)(a) An eligible individual’s weekly benefit amount shall be 1.25 percent of the total wages paid in the individual’s base year. However, such amount shall not be less than the minimum, nor more than the maximum weekly benefit amount.

* * *

(d) All weekly benefit amounts, if not a multiple of \$1, shall be computed to the next lower multiple of \$1.

* * *

(5) Benefits paid to an eligible individual in a benefit year shall not exceed 26 times the individual's weekly benefit amount, or one-third of the base year's wages paid, whichever is the lesser. If such amount is not a multiple of \$1, it shall be computed to the next lower multiple of \$1.

The Department determined that claimant had a monetarily valid claim, with a base year of all four calendar quarters of 2023. This was determined based on the date of claimant's initial claim, which was March 31, 2024. Claimant's contention in this matter is that the Department should have instead determined his base year, based on his initial claim, to be the fourth quarter of 2022 through the third quarter of 2023. Transcript at 16–17. The record supports claimant's contention.

Under ORS 657.010(1), a "base year" is "the first four of the last five completed calendar quarters preceding the benefit year." In other words, to determine an individual's base year, the calendar quarters to be considered are the five consecutive calendar quarters prior to the quarter in which the initial claim is filed. ORS 657.010(4) defines "calendar quarter" as "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." Thus, the first quarter of a given calendar year runs from January 1 through March 31 of that year, unless the Department has, by rule, defined a particular calendar quarter as an "approximate equivalent" of these dates.

At hearing, the Department's witness testified that March 31, 2024 "falls within the Department's claim calendar for [the] second quarter" of 2024. Transcript at 12. This testimony suggests that the Department considered March 31, 2024, to be within the second quarter of 2024 because the majority of the week in which that date falls (Sunday, March 31, 2024, through Saturday, April 6, 2024) is in the second calendar quarter of 2024, per OAR 471-030-0005(2). However, that provision of the rule explicitly does not apply "for purposes of computing total base year wages," and therefore is not applicable here. The Department's rules do not appear to otherwise address this concern. Therefore, because the Department has not, by rule, altered the definition of a calendar quarter for purposes of computing total base year wages, the definition under ORS 657.010(4) applies here. As such, because March 31, 2024 was the last day of the first quarter of 2024 as ORS 657.010(4) defines the calendar quarter, claimant's initial claim was filed in the *first* quarter of 2024, not the second, and the last five calendar quarters completed prior to the benefit year are therefore the fourth quarter of 2022 through the fourth quarter of 2023. The first four of these calendar quarters are the fourth quarter of 2022 through the third quarter of 2023.

The Department's witness also testified that, aside from the question of within which calendar quarter March 31, 2024 fell, claimant also could not use his wages from the fourth quarter of 2022 as part of his base year for the current benefit year because those wages had already been used for the previous benefit year. Transcript at 11–12. However, the Department offered no support for this assertion, and it is not clear what authority the Department relied on to conclude that wages reported for a given calendar quarter can only be used for the base year of one benefit year. During that discussion at the hearing, the ALJ asked the Department's witness, "Is there a phenomenon or an issue at Oregon Employment Department when considering base years being used to calculate benefits known as double dipping?" Transcript at 11. The Department's witness responded, "We do have what's called a double dip law, yes.

The claimant did actually meet the requirements for that. That's why he was eligible for this current claim." Transcript at 11.

The "double dipping" provision of the law discussed at hearing refers to ORS 657.150(2)(a)(B). That provision requires, for an individual to qualify for benefits, that they 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." Given the colloquial name for the provision, one might expect it to bar the usage of a calendar quarter's wages for more than one benefit year, and this may have been the basis for the Department's contention to that effect. However, the actual text of the statute does not say this. Instead, it merely requires, for an individual who has filed an initial claim for a new benefit year after having been paid benefits in a previous benefit year, that they have earned at least six times their WBA after the start of the previous benefit year to be monetarily eligible for benefits for the new benefit year. This provision exists in Oregon law so that it comports with the federal requirement that "an individual who has received compensation during his benefit year is required to have had work since the beginning of such year in order to qualify for compensation in his next benefit year[.]" 26 U.S.C. § 3304(a)(7).

As noted above, the Department's witness testified that claimant met this requirement for the current benefit year, and that assertion is supported by the record. The record does not explicitly show that claimant was paid benefits in the prior benefit year. Nevertheless, it can be inferred that he was paid benefits during that benefit year because of the Department's testimony that he had met the "double dip" requirement, which would not come into play if he had not been paid benefits. Further, claimant's prior benefit year began in April 2023, and claimant had combined wages of \$8,478.40 in the third and fourth quarters of that year. This significantly exceeds six times claimant's WBA, even when that WBA is re-determined using the base year that claimant asserted he should be entitled to use.² Thus, the record shows that claimant satisfied the requirements of ORS 657.150(2)(a)(B).

Finally, because ORS 657.150(2)(a)(B) does not bar claimant from using wages from the same calendar quarter for both his prior and current benefit years, the fourth quarter of 2022 through the third quarter of 2023 are the correct calendar quarters to use for claimant's base year for the current benefit year, so long as the wages from those quarters are sufficient to qualify claimant for a monetarily valid claim. The record shows that they are.

The sum of claimant's wages for October 1, 2022 through September 30, 2023 is \$39,496.80. The "highest quarter"—i.e., the base-year quarter in which claimant earned the most—was the first quarter of 2023, in which claimant earned \$22,232.00. One and one-half times claimant's highest-quarter wages is \$33,348, which is less than claimant's total base year wages. Therefore, claimant's earnings for these four quarters qualify him for a monetarily valid claim. 1.25 percent of his total base year wages is \$493.71, and claimant's WBA, when rounded to the next lowest dollar amount, therefore is \$493. 26 times claimant's WBA is \$12,818, and 1/3 of claimant's total base year wages is \$13,165.60. As the former figure is the lesser of the two, claimant's MBA is \$12,818.

² \$493 x 6 = \$2,958.

For the above reasons, claimant is entitled to a redetermination of his claim. Claimant's base year should be the fourth quarter of 2022 through the third quarter of 2023, with a WBA of \$493 and an MBA of \$12,818.

DECISION: Order No. 25-UI-282872 is modified, as outlined above.

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

DATE of Service: March 25, 2025

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 stated above**. See ORS 657.282. For forms and information, visit <https://www.courts.oregon.gov/courts/appellate/forms/Pages/appeal.aspx> and choose the appropriate form under "File a Petition for Judicial Review." You may also contact the Court of Appeals by telephone at (503) 986-5555, by fax at (503) 986-5560, or by mail at 1163 State Street, Salem, Oregon 97301.

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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 ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄໍາຕັດສິນນີ້.

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، می توانید 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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Email: appealsboard@employ.oregon.gov

Website: www.Oregon.gov/employ/pages/employment-appeals-board.aspx

The Oregon Employment Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance is available to persons with limited English proficiency at no cost.

El Departamento de Empleo de Oregon es un programa que respeta la igualdad de oportunidades. Disponemos de servicios o ayudas auxiliares, formatos alternos y asistencia de idiomas para personas con discapacidades o conocimiento limitado del inglés, a pedido y sin costo.