

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0204

Affirmed
Ineligible Weeks 45-24 through 18-25

PROCEDURAL HISTORY: On December 6, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant's weekly benefit amount was reduced to zero beginning November 3, 2024 because he received retirement pay each week that exceeded his weekly benefit amount (decision # L0007488159). Claimant filed a timely request for hearing. On March 13, 2025, ALJ Scott conducted a hearing, at which the employer failed to appear, and on March 14, 2025, issued Order No. 25-UI-286056, affirming decision # L0007488159. On March 31, 2025, claimant filed an application for review with the Employment Appeals Board (EAB).

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

FINDINGS OF FACT: (1) Claimant once worked for Marion County, Oregon, an employer that contributed to the Oregon Public Employees' Retirement System (PERS). In 2003, claimant retired and began receiving retirement pay from PERS. Thereafter, claimant did not work for a time.

(2) In 2023, claimant worked for an employer called Dynamic Life, Inc. Dynamic Life, Inc. was not an employer that contributed to PERS, either on claimant's behalf or on behalf of other employees.

(3) In the first quarter of 2024, claimant worked for the Oregon State Legislature. As claimant was a PERS retiree receiving retirement pay, the Oregon State Legislature did not make contributions to PERS on claimant's behalf. However, the Oregon State Legislature was an employer that contributed to PERS on behalf of other employees.

(4) On November 5, 2024, claimant filed his initial claim for unemployment insurance benefits. The base year of claimant's claim consisted of the third and fourth quarters of 2023 and the first and second quarters of 2024. Because claimant worked for the Oregon State Legislature in the first quarter of 2024, claimant's base year employers included the Oregon State Legislature. Claimant's other base year employer was Dynamic Life, Inc.

(5) Claimant filed weekly claims for benefits from November 3, 2024 through May 3, 2025 (weeks 45-24 through 18-25). These are the weeks at issue. Claimant's weekly benefit amount was \$836. The Department paid claimant benefits for the weeks of November 3, 2024 through November 30, 2024 (weeks 45-24 through 48-24). The Department did not pay claimant benefits for the weeks of December 1, 2024 through May 3, 2025 (weeks 49-24 through 18-25).¹

(6) The Department did not pay claimant for weeks 49-24 through 18-25 because it determined that the Oregon State Legislature was one of claimant's base year employers and, because claimant received PERS retirement pay and the Oregon State Legislature contributed to PERS on behalf of other employees, claimant was subject to a weekly benefit amount deduction. Each month claimant received PERS retirement pay in the amount of \$4,473.95. The Department multiplied \$4,473.95 by 12 months, and divided that figure by 52 weeks, which results in an apportioned PERS payment of \$1,032.45 per week. Because \$1,032.45 was higher than claimant's \$836 weekly benefit amount, the Department did not pay claimant for weeks 49-24 through 18-25.

(7) The Department paid claimant benefits for weeks 45-24 through 48-24 because it had not yet adjudicated the retirement pay deduction issue when claimant claimed and received benefits for those weeks.

CONCLUSIONS AND REASONS: Claimant's weekly benefit amount was subject to a retirement pay deduction for each of the weeks at issue. Claimant's weekly benefit amount was reduced to zero beginning November 3, 2024 because he received retirement pay each week that exceeded his weekly benefit amount.

ORS 657.205(1) provides, "an individual is disqualified for benefits for any week with respect to which the individual is receiving, will receive, or has received a governmental or other pension, retirement or retired pay, annuity, or other similar periodic payment based on the previous work of the individual, if payment is received under a plan maintained or contributed to by a base year employer of the individual."

ORS 657.205(2) provides, in pertinent part, "In determining disqualification for any week under subsection (1) of this section, if the remuneration and payments referred to in subsection (1) of this section cover a period greater than and include such week, a pro rata share of such remuneration and payments shall be apportioned to such week or weeks."

¹ EAB has taken notice of the facts contained in this paragraph, which are contained in Employment Department records. OAR 471-041-0090(1). 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 noticed fact(s) will remain in the record.

Claimant received PERS retirement pay in an amount that exceeded his weekly benefit amount for each of the weeks at issue. This is the case because claimant's weekly benefit amount was \$836 and his apportioned weekly PERS payment was \$1,032.45. Further, the Oregon State Legislature was one of claimant's base year employers, and the Oregon State Legislature was an employer that contributed to PERS on behalf of other employees. Therefore, 657.205(1) applies, and claimant is subject to a retirement pay deduction that reduces his weekly benefit amount to zero for each of the weeks at issue.

The Oregon State Legislature did not make contributions to PERS on claimant's behalf. However, it is immaterial whether the Oregon State Legislature contributed to PERS on claimant's behalf because, under ORS 657.205(1), if a base year employer contributed to PERS—on anyone's behalf—and claimant is receiving PERS retirement pay, he is disqualified from benefits if his apportioned weekly PERS payment exceeds his weekly benefit amount. Accordingly, because the Oregon State Legislature was an employer that contributed to PERS on behalf of other employees and claimant's apportioned weekly PERS payment exceeds his weekly benefit amount, he is not entitled to receive unemployment insurance benefits for the weeks at issue.

In his written argument, claimant contended that he should not be subject to the deduction because the Oregon State Legislature did not make contributions to PERS on his behalf. Claimant Argument at 2. It is true that the Oregon State Legislature did not contribute to PERS on claimant's behalf, but as already stated, the Oregon State Legislature need only to have contributed to PERS on behalf of other employees for the deduction to apply to claimant. Since the Oregon State Legislature was an employer that contributed to PERS on behalf of other employees, and was one of claimant's base year employers, the deduction applies to claimant and he is not entitled to receive benefits for the weeks at issue.

Claimant next argued that his PERS retirement payments are not payments under a retirement plan within the meaning ORS 657.205(1). Claimant Argument at 2-3. This argument is not persuasive. ORS 657.205(1) speaks of "a governmental or other pension, retirement or retired pay, annuity, or other similar periodic payment based on the previous work of the individual[.]" Claimant's PERS retirement payments fall well within the ambit of the language of the statute.

Claimant next argued that ORS 657.205(4) exempts claimant's Social Security retirement benefits from consideration as retirement pay that might have the effect of reducing his weekly benefit amount. Claimant Argument at 3-4. This is correct, but immaterial to the issue at hand. Claimant's PERS retirement pay is distinct from his Social Security retirement benefits. His PERS retirement pay counts as a "governmental or other pension, retirement or retired pay, annuity, or other similar periodic payment based on the previous work of the individual[.]" ORS 657.205(1). As such, and because the Oregon State Legislature was an employer that contributed to PERS on behalf of other employees, and was one of claimant's base year employers, the ORS 657.205(1) deduction applies to claimant.

For the reasons set forth above, claimant's weekly benefit amount was reduced to zero beginning November 3, 2024 because he received retirement pay each week that exceeded his weekly benefit amount. Claimant is not eligible to receive unemployment insurance benefits for the weeks at issue.

DECISION: Order No. 25-UI-286056 is affirmed.

D. Hettle and A. Steger-Bentz;

S. Serres, not participating.

DATE of Service: May 7, 2025

NOTE: The Department may defer recovery or completely waive the overpaid amount if certain standards are met. If you apply but do not qualify for a waiver, other relief may be available, such as temporarily pausing collection efforts or limiting reductions of current benefits. It is important to apply for a waiver as soon as possible because waivers are not retroactive. For more information on requesting a waiver, go to <https://unemployment.oregon.gov/overpayments>.

The Overpayment Waiver Application is available for download at <https://unemployment.oregon.gov/uploads/docs/FORM129-EN.pdf> and can be submitted in any of these ways:

- Frances Online: Log in to your Frances Online account and use “Send a Message”
- Use the Contact Us form online at: unemployment.oregon.gov/contact
- Email: UIOverpayments@employ.oregon.gov – Subject: “Waiver Request”
- Fax: 503-947-1811 – ATTN: BPC Waiver Requests
- U.S. Mail: BPC Overpayment Waivers, PO Box 14130, Salem, OR 97311

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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveygizmo.com/s3/5552642/EAB-Customer-Service-Survey>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.



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 دستورالعمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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Email: appealsboard@employ.oregon.gov

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

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