

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0424

Affirmed
Invalid Claim

PROCEDURAL HISTORY: On May 14, 2025, the Oregon Employment Department (the Department) served notice of a Wage and Potential Benefit Report (WPBR) concluding that claimant did not have a valid claim for benefits because she had not earned \$4,368 in subject employment after the start of her previous claim, and therefore did not requalify for benefits (decision # L0010758546). Claimant filed a timely request for hearing. On July 10, 2025, ALJ Adamson conducted a hearing, and on July 11, 2025 issued Order No. 25-UI-297371, affirming decision # L0010758546. On July 14, 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 her 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 worked as an engineer for an employer called SightX, Inc. The employer was subject to ORS chapter 657, the law that governs unemployment insurance in Oregon.

(2) Claimant was a salaried employee. The employer paid claimant roughly \$140,000 per year in increments of \$5,833.33 every two weeks, which the employer expressed on claimant's paychecks as a \$67.31 hourly rate of pay. Exhibit 2 at 6-7. Claimant typically worked Monday through Friday.

(3) The employer was a start-up company. In May 2024, the employer began running out of money to pay their staff. Claimant did not perform services for the employer on Sunday, May 12, 2024. On Monday, May 13, 2024, claimant logged into work and the employer informed her she was being laid off. That day, claimant performed four hours of services for the employer doing off-boarding tasks. Thereafter, claimant did not work for SightX or any other employer.

- (4) On May 15, 2024, the employer issued claimant a paycheck for the May 1 through 15, 2024 pay period. The May 15, 2024 paycheck paid claimant the typical \$5,833.33 amount, although claimant had performed only four hours of services on May 13, 2024, and was laid off that day.
- (5) On May 24, 2024, claimant filed an initial claim for benefits (the prior claim). The Department determined claimant had a monetarily valid claim for benefits, with a \$812 weekly benefit amount and a benefit year beginning May 12, 2024 and expiring on May 10, 2025.
- (6) On May 31, 2024, the employer issued claimant a paycheck for the May 16 through 31, 2024 pay period. The May 31, 2024 paycheck paid claimant the typical \$5,833.33 amount, although claimant was already laid off and had not performed any services for the employer during the period of May 15 through May 31, 2024.
- (7) At the time the employer laid off claimant, they did not have a human resources department and the situation was “a little chaotic.” Transcript at 31. Claimant found that the employer’s communications about the lay-off were “often not super clear,” which she attributed to their status as an “early stage start-up[.]” Transcript at 40. Although “it wasn’t literally categorized as severance pay,” claimant did not “exactly know” how to classify her pay received in the May 15 and 31, 2024 paychecks for the time she did not perform any services for the employer. Transcript at 31.
- (8) Claimant claimed benefits on the prior claim for 26 consecutive weeks until she exhausted the maximum benefit amount on November 16, 2024. On May 10, 2025, the benefit year of the prior claim expired.
- (9) On May 11, 2025, claimant filed a new initial claim for benefits (the current claim). The base year of the current claim consisted of all four quarters of 2024. Claimant’s total base year wages consisted of the earnings claimant received from the employer in the first and second quarters of 2024 before they laid her off work (\$34,948.50 and \$23,299.00, respectively). If monetarily valid, the current claim’s weekly benefit amount would be \$728.
- (10) The Department determined that the current claim was not monetarily valid. The Department determined that the governing law required claimant to have earned wages equal to six times the \$728 weekly benefit amount (\$4,368) in subject employment for service performed after the beginning of the prior claim’s benefit year, May 12, 2024. Although claimant had received pay after May 12, 2024 in the May 15 and 31, 2024 paychecks, the Department determined that claimant had not met the above requirement.

CONCLUSIONS AND REASONS: Claimant’s current claim is not monetarily qualified under ORS 657.150(2)(a)(B) and is therefore not a valid claim for benefits.

ORS 657.150 states, in relevant part, and with emphasis added:

- (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.

* * *

(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.

Under ORS 657.105(1), subject to some exceptions, "wages" means "all remuneration for employment, including the cash value . . . of all remuneration paid in any medium other than cash." Under OAR 471-030-0017(2) (December 14, 2022), where an employer-employee relationship exists, "remuneration" means "compensation resulting from the employer-employee relationship, including wages, salaries, incentive pay, sick pay, compensatory pay, bonuses, commissions, stand-by pay, and tips."

The current claim meets ORS 657.150(2)(a)(A). All the wages claimant received from the employer were earned in subject employment. Claimant's total base year wages from the first and second quarters of 2024 were \$34,948.50 and \$23,299.00, respectively, which totals \$58,247.50. That amount is more than \$1,000. The \$58,247.50 total base year wages are also in excess of one and one-half times the wages in the highest quarter of the base year. Claimant's highest base year quarter was the first quarter of 2024, in which she earned \$34,948.50. One and one-half times \$34,948.50 is \$52,422.75, which is less than \$58,247.50. Applying ORS 657.150(4), if the claim is monetarily qualified, the current claim's weekly benefit amount would be \$728.¹

¹ Per ORS 657.150(4)(a), 1.25 percent of \$58,247.50 is \$728.09, which, rounded down per ORS 657.150(4)(d), is \$728.

However, the current claim does not satisfy ORS 657.150(2)(a)(B) and so is not monetarily qualified. The Department paid benefits to claimant for multiple weeks during the preceding benefit year. All the wages claimant received from the employer were earned in subject employment. Therefore, what remains necessary to be assessed is whether, after the beginning of the prior claim's benefit year, which was May 12, 2024, claimant earned wages in employment for *service performed* equal to six times the \$728 weekly benefit amount. The record shows that claimant did not.

May 12, 2024 was a Sunday and claimant did not perform services for the employer that day. On Monday May 13, 2024, claimant performed four hours of service for the employer and was laid off. Thereafter, claimant did not work for SightX or any other employer. Using claimant's \$67.31 hourly rate of pay, claimant's four hours of service performed on May 13, 2024 amounted to \$269.24 of wages earned in employment for service performed. That falls short of six times \$728 (which equals \$4,368).

In her written argument, claimant contended that because she was a salaried employee, her pay for time she did not perform any service for the employer, May 12, part of May 13, May 14 and 15, 2024 on the first paycheck, and the entire May 16 through 31, 2024 period reflected on the second paycheck, should be considered in assessing whether she met ORS 657.150(2)(a)(B). Claimant's Argument at 26-29. In particular, claimant asserted that "convert[ing] [her] salary-based pay to an hourly value" is improper and conflicts with OAR 839-020-0004(32) (January 15, 2024). Claimant's Argument at 28.

These arguments are not persuasive. OAR 839-020-0004(32) is not applicable because by its terms, it applies only to "ORS 653.010 to 653.261 and these rules," not to ORS chapter 657 or to the administrative rules that govern unemployment insurance. Further, claimant's paychecks themselves expressed her pay in a \$67.31 hourly rate of pay format.² See Exhibit 2 at 6-7.

It is correct that all the pay reflected on the two paychecks constituted "wages" for purposes of ORS chapter 657. This is so because ORS 657.105(1) defines "wages" as "all remuneration for employment" and, where an employer-employee relationship exists, OAR 471-030-0017(2) defines "remuneration" to mean "compensation resulting from the employer-employee relationship including . . . salaries[.]" However, ORS 657.150(2)(a)(B) requires that the "wages" be earned "in employment for *service performed*[.]" The record shows that after May 12, 2024, claimant performed only four hours of service for the employer, the four hours she worked on May 13, 2024, and so only the wages earned for those four hours may be considered in assessing whether claimant satisfied ORS 657.150(2)(a)(B).

EAB is required to apply the text of ORS 657.150(2)(a)(B), and the text of the statute states that only wages earned in employment for service performed are applicable to the analysis. Viewing ORS 657.150(2)(a)(B) this way is also consistent with the Department's interpretation of the statute. The Department considers only wages earned by performing a service to count when assessing requalification under ORS 657.150(2)(a)(B). See Oregon Employment Department, Unemployment Insurance Policy Guide § 3 at 24 (March 14, 2025) ("Earnings that will not satisfy the requalification requirement: . . . Severance/separation pay . . . While these types of pay can be classified as wages, *the claimant did not earn them by performing a service.*") (emphasis added). The Department's interpretation of the statute is reasonable.

² The \$67.31 hourly rate of pay is consistent with taking claimant's \$140,000 annual pay figure, dividing it by 52 weeks, and dividing the result by 40 hours in a week. ($\$140,000/52 = \$2,692.31$. $\$2,692.31/40 = \67.31).

Rather than in exchange for performing a service, the pay claimant received beginning May 12, 2024, other than that given in exchange for the four hours of service performed on May 13, 2024, was given to claimant gratis. Regardless of whether the employer described it as such, claimant's pay received without performing a service is consistent with severance pay or a separation allowance. This is so because the pay came shortly after claimant's May 13, 2024 lay-off, and though there was not "official agreement that it was severance pay," the employer's communications about the lay-off were "often not super clear," which claimant attributed to their status as an "early stage start-up[.]" Transcript at 31, 40. At hearing, claimant did not rule out viewing the pay as a severance. Claimant testified that while "it wasn't literally categorized as severance pay," she did not "exactly know" how to classify her pay received in the May 15 and 31, 2024 paychecks for the time she did not perform any services for the employer. Transcript at 31.³

In any event, while some ambiguity remains as to whether the employer intended the wages they gave claimant without her having performed a service to be severance or separation pay, it is evident from the record that the only wages claimant earned after May 12, 2024 in employment for *service performed* were the four hours on May 13, 2024. That amounted to \$269.24 of wages earned in employment for service performed, which is less than six times the \$728 weekly benefit amount, or \$4,368.⁴ Accordingly, claimant's current claim is not monetarily qualified under ORS 657.150(2)(a)(B) and is therefore not a valid claim for benefits.

DECISION: Order No. 25-UI-297371 is affirmed.

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

DATE of Service: August 21, 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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³ In her written argument, claimant also cited to OAR 471-031-0045(1) (January 15, 1981), which states, "Remuneration paid as a dismissal or separation allowance, vacation pay, holiday pay, or guaranteed wage is 'wages.'" Claimant's Argument at 19. The issue is not whether the pay claimant received in the May 15 and 31, 2024 paychecks were wages. All the pay received via those paychecks meet the ORS 657.105(1) definition of "wages." The issue is whether claimant earned a sufficient amount of those wages in employment for *service performed* after May 12, 2024 to satisfy ORS 657.150(2)(a)(B). As discussed, the record shows that she did not.

⁴ At hearing, claimant implied that the appropriate weekly benefit amount to consider when conducting the ORS 657.150(2)(a)(B) analysis is the weekly benefit amount from the prior claim, which was \$812. Transcript at 35. If the \$812 weekly benefit amount is used, the result is the same. The \$269.24 of wages earned in employment for service performed did not equal six times \$812 (which is \$4,872).

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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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