

EMPLOYMENT APPEALS BOARD DECISION
2025-EAB-0587

Affirmed
Federal Wages Earned in Subject Employment
Claim Redetermination Required

PROCEDURAL HISTORY: On November 19, 2021, the Oregon Employment Department (the Department) issued a Wage and Potential Benefit Report (WPBR) concluding that claimant had insufficient wages in subject employment to establish a monetarily valid claim for benefits. On November 29, 2021, the WPBR became final without claimant having filed a request for hearing. On December 14, 2024, claimant filed a late request for hearing. ALJ Kangas considered the request, and on February 26, 2025 issued Order No. 25-UI-284264, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by March 12, 2025. On March 12, 2025, claimant filed a timely response to the appellant questionnaire. On April 3, 2025, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 25-UI-284264 was vacated and that a hearing would be scheduled to determine whether to allow claimant's late request for hearing and, if so, the merits of the WPBR.

On May 12, 2025, ALJ Nyberg conducted a hearing, and on May 13, 2025 issued Order No. 25-UI-292136, re-dismissing claimant's request for hearing as late without good cause and leaving the WPBR undisturbed. On May 16, 2025, claimant filed an application for review of Order No. 25-UI-292136 with the Employment Appeals Board (EAB). On June 18, 2025, EAB issued EAB Decision 2025-EAB-0297, reversing Order No. 25-UI-292136, allowing claimant's late request for hearing, and remanding the matter for a hearing on the merits of the WPBR. On July 21, 2025, ALJ Nyburg conducted a hearing, and on September 22, 2025 issued order No. 25-UI-304557, reversing the WPBR by concluding that claimant had federal wages in subject employment that the Department must apply to the claim. On October 7, 2025, the Department filed an application for review of Order No. 25-UI-304557 with EAB.

WRITTEN ARGUMENT AND EVIDENTIARY MATTERS: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The Department's argument contained information that was not part of the hearing record, but the information is relevant and material, and factors or circumstances beyond the Department's reasonable control prevented them from offering the information during the hearing. *See* ORS 657.275(2) and OAR 471-041-0090(1). The information pertains to events that occurred after Order No. 25-UI-304557 was issued, and therefore could not have been presented at hearing. The information has been marked and admitted as EAB Exhibit 1.

EAB has also considered other information that was not part of the hearing record, but is contained in Department records. OAR 471-041-0090(1). The information consists of the November 24, 2021 ES-931 response and the December 6, 2021 EW-934 response. These documents have been marked and admitted as EAB Exhibit 2.

Copies of these exhibits have been included with the decision. Any party that objects to EAB admitting EAB Exhibits 1 and 2 must send their objection to EAB in writing, explaining 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 exhibits will remain in the record.

FINDINGS OF FACT: (1) On November 18, 2021, claimant filed an initial claim for benefits. The Department determined that the claim's base year consisted of the third and fourth quarters of 2020 and the first and second quarters of 2021. At that time, the Department had no reports from employers that claimant had worked in subject employment during the base year. Claimant reported in the initial claim that he had worked for the federal government during the base year.

(2) In 2019, claimant worked on an intermittent basis for the U.S. Census Bureau, a part of the Department of Commerce. Claimant did not work during the third and fourth quarters of 2020.¹ On October 16, 2020, claimant filed an initial claim for benefits (which is not at issue in this appeal), and the Department used his Census Bureau wages from the third and fourth quarters of 2019 to establish the monetary validity of the claim and weekly and maximum benefit amounts.²

(3) In 2021, claimant resumed his intermittent work for the Census Bureau and was later issued a W-2 form showing \$11,701.31 in wages were paid to him during that year.

(4) Federal government agencies are each assigned a unique code to be used by state unemployment insurance departments to request verification of wages and separation information when a federal agency's employee or former employee files a claim for benefits. The Department of Commerce is

¹ The record suggests that claimant's most recent Census Bureau employment relationship began on October 26, 2020, but claimant asserted that he stopped performing work for the employer in 2019 and resumed in 2021. *See* Order No. 25-UI-292136, Exhibit 2 at 4, 8.

² EAB has taken notice of these facts, 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 facts will remain in the record.

assigned two codes: “914” for employees hired to *exclusively* work on the 2020 decennial census, and “450” for all other employees, including those who worked on the decennial census in addition to other duties. State unemployment insurance departments use form ES-931 to initially request wage and separation information from federal agencies, and form ES-934 to re-request it when the response is incomplete or the claimant disagrees with it.

(5) After claimant filed his November 18, 2021 initial claim, the Department sent an ES-931 request using code 450. The response received on November 24, 2021 listed no wages during the base period, but gave a separation date of “11/20/21” and stated: “Reason: Perm Layoff” and “Performed Federal Service: Y[.]” EAB Exhibit 2 at 1.

(6) Claimant requested reconsideration of the exclusion of his federal wages, and the Department sent an ES-934 request using code 450, which stated in its entirety, “Your 931 response indicates claimant is a casual employee. Claimant did not report he was a casual employee only. Please verify [if] your response is correct?” EAB Exhibit 2 at 2. The response, received on December 6, 2021, stated, “The claimant is a casual employee who works on an as needed basis,” then repeated the Department’s query with the response “Correct[.]” EAB Exhibit 2 at 2. Based on this information, the Department concluded that claimant’s 2021 Census Bureau wages were not earned in subject employment, and therefore took no further action to verify the base year wages suggested by the W-2 form. The Department notified claimant that it would not amend the WPBR to add his federal wages based on their conclusion that they were not earned in subject employment.

(7) On September 23, 2025, the Department sent an ES-931 request using code 914. The response was that there was “no record” of claimant having worked for that employer. EAB Exhibit 1 at 1.

CONCLUSIONS AND REASONS: Claimant’s federal wages were earned in subject employment. An amended WPBR must be issued which includes the portion of those wages paid to claimant in the base year.

ORS 657.030(1) provides:

As used in this chapter, except as provided in ORS 657.035, 657.040 and 657.043 to 657.094, “employment” means service for an employer, including service in interstate commerce, within or outside the United States, performed for remuneration or under any contract of hire, written or oral, express or implied.

ORS 657.065(1) provides:

“Employment” does not include service performed in the employ of the United States Government or any instrumentality of the United States, except that if the Congress of the United States permits states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment insurance law, then, to the extent permitted by Congress, and after the date such permission becomes effective, this chapter shall be effective as to such instrumentalities and as to services performed for such instrumentalities in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services. * * *

5 U.S.C. §8501 provides:

For the purpose of this subchapter—

(1) “Federal service” means service performed after 1952 in the employ of the United States or an instrumentality of the United States which is wholly or partially owned by the United States, but does not include service (except service to which subchapter II of this chapter applies) performed—

(A) by an elective official in the executive or legislative branch;

(B) as a member of the armed forces or the Commissioned Corps of the National Oceanic and Atmospheric Administration;

(C) by members of the Foreign Service for whom payments are provided under section 609(b)(1) of the Foreign Service Act of 1980;

(D) outside the United States, the Commonwealth of Puerto Rico, and the Virgin Islands by an individual who is not a citizen of the United States;

(E) by an individual excluded by regulations of the Office of Personnel Management from the operation of subchapter III of chapter 83 of this title because he is paid on a contract or fee basis;

(F) by an individual receiving nominal pay and allowances of \$12 or less a year;

(G) in a hospital, home, or other institution of the United States by a patient or inmate thereof;

(H) by a student-employee as defined by section 5351 of this title;

(I) by an individual serving on a temporary basis in case of fire, storm, earthquake, flood, or other similar emergency;

(J) by an individual employed under a Federal relief program to relieve him from unemployment;

(K) as a member of a State, county, or community committee under the Agricultural Stabilization and Conservation Service or of any other board, council, committee, or other similar body, unless the board, council, committee, or other body is composed exclusively of individuals otherwise in the full-time employ of the United States; or

(L) by an officer or a member of the crew on or in connection with an American vessel—

(i) owned by or bareboat chartered to the United States; and

(ii) whose business is conducted by a general agent of the Secretary of Commerce;

if contributions on account of the service are required to be made to an unemployment fund under a State unemployment compensation law under section 3305(g) of title 26;

(2) “Federal wages” means all pay and allowances, in cash and in kind, for Federal service;

(3) “Federal employee” means an individual who has performed Federal service[.]

* * *

5 U.S.C. §8502 provides:

(a) The Secretary of Labor, on behalf of the United States, may enter into an agreement with a State, or with an agency administering the unemployment compensation law of a State, under which the State agency shall—

(1) pay, as agent of the United States, compensation under this subchapter to Federal employees; and

(2) otherwise cooperate with the Secretary and with other State agencies in paying compensation under this subchapter.

(b) The agreement shall provide that compensation will be paid by the State to a Federal employee in the same amount, on the same terms, and subject to the same conditions as the compensation which would be payable to him under the unemployment compensation law of the State if his Federal service and Federal wages assigned under section 8504 of this title to the State had been included as employment and wages under that State law.

* * *

5 U.S.C. §8504 provides:

Under regulations prescribed by the Secretary of Labor, the Federal service and Federal wages of a Federal employee shall be assigned to the State in which he had his last official station in Federal service before the filing of his first claim for compensation for the benefit year. However—

(1) if, at the time of filing his first claim, he resides in another State in which he performed, after the termination of his Federal service, service covered under the unemployment compensation law of the other State, his Federal service and Federal wages shall be assigned to the other State; and

(2) if his last official station in Federal service, before filing his first claim, was outside the United States, his Federal service and Federal wages shall be assigned to the State where he resides at the time he files his first claim.

UCFE [Unemployment Compensation for Federal Employees] Instructions for Federal Agencies (March 1995)³ provides, in relevant part:

Chapter I

* * *

(3)(a) Federal law (5 U.S.C. 8501-8509) establishes the Secretary of Labor as the authority responsible for interpretation of the UCFE law (including the determination of what constitutes Federal service and wages for UCFE purposes), promulgation of regulations to implement and carry out the purposes of the law, and for administration of the program including the payment of benefits, if necessary. Therefore, the construction of 5 U.S.C. 8501-8509 is the sole responsibility of the DOL. The Secretary's regulations which implement the UCFE program are set forth at 20 CFR Part 609. The Federal law and regulations are reprinted as an Appendix A and B, respectively, to these instructions. The Secretary's coverage interpretations (Federal service and wages) are addressed in greater detail in CHAPTER III. * * *

* * *

Chapter III

(1) (a) Federal Service. "Federal service" is not limited to civilian employees who are covered for civil service retirement purposes. The term "Federal service," as used in the UCFE program and these instructions, means work performed in the employ of the United States, or any wholly-owned or partially-owned instrumentality of the United States, with the exception of the specifically excluded services listed in 5 U.S.C. 8501. Federal agencies should anticipate that individuals performing "Federal Civilian Service" will be eligible for benefits upon separation, provided the individuals meet the employment and wages qualifying requirements of State UC law. Benefits paid by the SESA are charged to the Federal agency based on the Federal agency pro rata share of benefit cost.

(b) Federal Wages. The term "Federal wages" is defined in (5 U.S.C. 8501(2)) as "all pay and allowances, in cash or in kind, for Federal service" and thereby includes all payments for sick leave, annual leave (including lump-sum) and severance pay.

(c) Secretary's Interpretations. The Secretary of Labor makes determinations whether specific instances or categories of Federal employment and pay constitute "Federal Service" and/or "Federal Wages" in accordance with 5 U.S.C. 8501. Effective March 20, 1992, the Secretary of Labor delegated this responsibility to the Director of the Unemployment Insurance Service.

³ <https://oui.doleta.gov/unemploy/pdf/UCFE.pdf>

* * *

(2) Secretary's Interpretations: Federal Service/ Federal Wages. The Secretary of Labor has determined the following types of employment to constitute "Federal service" (civilian) and "Federal wages" (civilian) within the meaning of the Federal UCFE law.

* * *

(b) Department of Commerce.

(1) Census- Census enumerators.

* * *

* * *

Claimant's W-2 form for 2021 and testimony established that he likely earned at least \$11,701.31 that year working for the Census Bureau. In late 2021, after claimant filed the initial claim for benefits at issue, the Department sent ES-931 and ES-934 requests for wage verification and separation information to the Department of Commerce using code 450. The Department asserted that the responses stated claimant had worked for the Census Bureau on a "casual" or intermittent basis during the year, and that any wages earned therefore were not subject to unemployment insurance coverage. Transcript at 5.⁴ The Department excluded the wages from claimant's WPBR on that basis, rendering his claim monetarily non-valid. Another ES-931 request sent using code 914 in September 2025 yielded a response that there was no record of claimant's employment under that code.

The Department did not dispute claimant's evidence regarding the amount of his earnings in 2021. The issue on which the parties disagree is whether the wages were earned in subject employment. The Department's assertion that the wages were not earned in subject employment appears to be based entirely on the responses it received in 2021 from the Department of Commerce, using code 450, that the wages were earned through "casual" employment. *See, e.g.*, Transcript at 5. However, the ES-931 response specifically indicated that claimant's work *was* in "Federal service," and it is unclear from the record and relevant legal authority why the Department would conclude otherwise based merely on his having been a "casual" employee. EAB Exhibit 2 at 1-2.

5 U.S.C. §8501(1) provides that "service performed after 1952 in the employ of the United States" is "Federal service" which qualifies as subject employment under state unemployment insurance laws, and working on a "casual" or intermittent basis is not one of the listed exceptions to that provision. *See* 5 U.S.C. §8501(1)(A)-(L). Federal law also provides that the U. S. Secretary of Labor has the sole authority to interpret what constitutes "Federal service and wages" for purposes of unemployment insurance coverage. UFCE Instructions for Federal Agencies (I)(3)(a). Moreover, federal guidance shows that the Secretary of Labor has expressly determined that "census enumerators" working for the Department of Commerce are, without exception, performing "Federal service" and earning "Federal wages" for purposes of unemployment insurance coverage. UFCE Instructions for Federal Agencies

⁴ All citations to the transcript refer to the September 11, 2025 hearing.

(II)(2)(b)(1). The Department has not cited any specific legal authority which would cast doubt on the applicability of these authorities, or the accuracy of the ES-931 response indicating that the federal government deemed claimant's work to be "Federal service," and therefore was subject employment. Additionally, the record shows that claimant worked for the Census Bureau on a similar "casual" basis in 2019, and that the Department used wages from that employment in an earlier claim. The Department's assertion that "casual" federal employment cannot be subject employment with regard to the 2021 wages is even more perplexing in light of this evidence.

For these reasons, claimant's 2021 Census Bureau wages were earned in subject employment, and his claim must be redetermined to include the portion of the wages paid during the calendar quarters of claimant's base year. *See* OAR 471-030-0010 (January 11, 2018). The ES-934 request using code 450, sent in November or December 2021, failed to address the proper subject of claimant's request for WPBR reconsideration—what his quarterly earnings were during the base year—and instead focused only on the irrelevant issue of whether claimant's employment could be characterized as "casual." It may therefore benefit the parties for the Department to send another ES-934 request using code 450, citing the W-2 form and specifically asking for the correct quarterly wage amounts for the base year and alternate base year. Claimant may also provide additional information to the Department to help it determine what portion of his 2021 wages were paid to him in each calendar quarter, such as his paystubs issued at or around the end of each quarter that are part of the standard or alternate base year (March 31, 2021, June 30, 2021, and September 30, 2021). If the Department cannot obtain sufficient information to determine the amount of wages paid in each quarter, the annual wages listed on the W-2 form must be allocated in accordance with applicable law. *See* ORS 657.150(3).

DECISION: Order No. 25-UI-304557 is affirmed.

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

DATE of Service: November 7, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymizmo.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.

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

Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711

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.