

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-1105

Affirmed
Overpayment, No Penalties

PROCEDURAL HISTORY: On June 4, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work with Personnel Source Inc. on July 27, 2017 and was therefore disqualified from receiving benefits (decision # 134543). On June 7, 2018, the Department served notice of another administrative decision, based upon decision # 134543, assessing a \$5,034 overpayment, \$755.10 monetary penalty, and 34 penalty weeks (decision # 194556). Claimant filed timely requests for hearing on both decisions.

On July 5, 2018, the Office of Administrative Hearings (OAH) mailed two notices of two hearings scheduled for July 18, 2018, at both of which claimant failed to appear. On July 19, 2018, ALJ Murdock issued Order No. 18-UI-113396, dismissing claimant's request for hearing on decision # 134543 for failure to appear, and Order No. 18-UI-113397, dismissing claimant's request for hearing on decision # 194556 for failure to appear. On July 23, 2018, claimant filed requests to reopen both July 18th hearings.

On July 31, 2018, OAH mailed two notices of two hearings scheduled for August 14, 2018, at both of which claimant failed to appear. On August 14, 2018, ALJ L. Lee issued Order No. 18-UI-114926, dismissing claimant's request to reopen the July 18th hearing on decision # 134543 for failure to appear, and ALJ Murdock issued Order No. 18-UI-114924, dismissing claimant's request to reopen the July 18th hearing on decision # 194556 for failure to appear. On August 21, 2018, claimant filed requests to reopen both August 14th hearings.

On August 30, 2018, OAH mailed two notices of two hearings scheduled for September 12, 2018. On September 12, 2018, claimant failed to appear at the hearing relating to decision # 134543 and claimant's requests to reopen the hearings on that matter. Also on September 12, 2018, ALJ Murdock conducted a hearing, at which time claimant appeared, on claimant's requests to reopen the July 18th and August 14th hearings on decision # 194556.

On September 14, 2018, ALJ Murdock issued Order No. 18-UI-116615, dismissing claimant's request to reopen the hearings related to decision # 134543 for failure to appear. On September 14, 2018, ALJ Murdock also issued Order No. 18-UI-116616, denying claimant's request to reopen the hearings related

to decision # 194556. On September 28, 2018, claimant filed an application for review of Order No. 18-UI-116616 with the Employment Appeals Board (EAB). On October 4, 2018, Order No. 18-UI-116615 became final without claimant having filed a request to reopen the hearings related to decision # 134543.

On October 15, 2018, EAB issued Appeals Board Decision 2018-EAB-0950, reversing Order No. 18-UI-116616 and remanding that case to OAH for a hearing on the merits of decision # 194556. On November 13, 2018, ALJ Murdock conducted the hearing, and on November 14, 2018 issued Order No. 18-UI-119685, concluding claimant was overpaid \$5,034 but was not liable for any penalties. On November 21, 2018, claimant filed an application for review of Order No. 18-UI-119685 with EAB.

With his application for review, claimant again submitted a notice of substantial evidence determination from the civil rights division of the Oregon Bureau of Labor and Industries pertaining to his employment with and separation from Personnel Source, the employer in this matter, again arguing that he did not voluntarily leave that employment. Although we understand claimant's position about the nature of his work separation from Personnel Source, as we explained in EAB Decision 2018-EAB-0950, EAB does not have jurisdiction over claimant's work separation or any other matter related to the Department's decision # 134543 concluding claimant voluntarily left work without good cause and was disqualified from benefits because of that work separation. Although claimant had the right to a hearing on decision # 134543 and the right to appeal the outcome of any hearing on that decision, he lost those rights when he failed to appear at two hearings and did not request reopening after failing to appear at the September 12th hearing, allowing Order No. 18-UI-116615 to become final. Because matters pertaining to decision # 134543 are final, EAB does not have jurisdiction to address the matter of claimant's work separation. For purposes of claimant's claim for unemployment insurance benefits, as a matter of law, he has been deemed to have voluntarily left work with Personnel Source without good cause. If claimant would like to pursue filing a late request to reopen the hearings pertaining to decision # 134543, he may contact OAH for instructions.

FINDINGS OF FACT: (1) On November 20, 2017, claimant filed an initial claim for unemployment insurance benefits. His weekly benefit amount was \$310. He claimed and was paid benefits each week from November 19, 2017 to November 25, 2017 and December 10, 2017 to April 7, 2018 (week 47-17 and 50-17 to 14-18), the weeks at issue.

(2) Prior to the weeks at issue claimant worked for Personnel Source as a temporary employee. He was unable to continue in a particular assignment due to an injury, asked for a different assignment, and waited for Personnel Source to give him one. Claimant did not believe he had separated from his employment with Personnel Source, and reported to the Department when claiming benefits that he was away from work because of a layoff due to lack of work.¹

(3) Based upon claimant's report, the Department paid claimant a total of \$5,034 in unemployment insurance benefits that he was not entitled to receive. Had claimant reported to the Department that he had voluntarily left work, the Department would not have paid benefits to claimant without first investigating his work separation and determining whether or not the work separation was disqualifying.

¹ Although claimant did not believe he had separated from work with Personnel Source when he left an assignment due to injury, OAR 471-030-0038(1)(a) suggests he had, stating, "In the case of individuals working for temporary agencies or employee leasing companies, the employment relationship shall be deemed severed at the time that a work assignment ends."

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant was overpaid and liable to repay \$5,034 to the Department.

ORS 657.310(1) provides that an individual who received benefits to which the individual was not entitled is liable to either repay the benefits or have the amount of the benefits deducted from any future benefits otherwise payable to the individual under ORS chapter 657. That provision applies if the benefits were received because the individual made or caused to be made a false statement or misrepresentation of a material fact, or failed to disclose a material fact, regardless of the individual's knowledge or intent. *Id.*

Claimant argued at the hearing and in argument that he did not voluntarily leave work, much less leave without good cause, and therefore was not overpaid benefits. Although we understand claimant's position, because decision # 134543 is final as a matter of law he is not entitled to dispute the outcome of that decision. For purposes of claimant's claim for unemployment insurance benefits, it is established as a matter of law that claimant voluntarily left work without good cause and was disqualified from receiving benefits during the weeks at issue. The Department paid claimant \$5,034 in benefits during those weeks that claimant was not entitled to receive. He was, therefore, overpaid \$5,034.

Claimant received the overpaid benefits because he reported to the Department that he was unemployed because of a layoff due to lack of work. Based on decision # 134543, however, for purposes of this unemployment insurance claim claimant has actually been deemed unemployed because he voluntarily left work. The reason an individual is unemployed is material to whether or not the individual should be qualified or disqualified for benefits. Claimant's report to the Department that he was laid off due to lack of work is therefore a false statement or misrepresentation of a material fact. Regardless of the reason for the false statement or misrepresentation, whether it was made on purpose or, as is likely in this case, because claimant did not understand the legal definitions that apply to the work separations from temporary employment agencies, claimant's false report to the Department caused the Department to overpay him, and claimant must therefore be liable to repay the \$5,034 overpayment to the Department.

DECISION: Order No. 18-UI-119685 is affirmed.

J. S. Cromwell and D. P. Hettle;
S. Alba, not participating.

DATE of Service: December 20, 2018

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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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 desisyong ito.

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 Asuntos Laborales. Si no está de acuerdo con esta decisión, puede presentar una Petición 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 محكمة 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 دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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