

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0115

Affirmed
Overpayment Assessed

PROCEDURAL HISTORY: On November 20, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work for the week of November 4 through November 10, 2018 (week 45-18), and therefore was ineligible for benefits for that week (decision # 64820). On December 10, 2018, Decision # 64820 became final without a request for hearing having been filed by claimant. On December 31, 2018, the Department served notice of an administrative decision assessing a \$294 overpayment based on decision # 64820 (decision # 152040). Claimant filed a request for hearing. On January 28, 2019, ALJ Griffin conducted a hearing, and on January 29, 2019, issued Order No. 19-UI-123574, affirming the Department's decision. On February 2, 2019, claimant filed an application for review of Order No. 19-UI-123574 with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and claimant's written argument to the extent it was based on the hearing record. Based on a *de novo* review of the record, and pursuant to ORS 657.275(2), the ALJ's findings and analysis with respect to the ALJ's conclusion that claimant filed a valid and timely request for hearing on decision # 152040 are **adopted**. The remainder of this decisions addresses the merits of decision # 152040.

FINDING OF FACT: On September 29, 2018, claimant filed an initial claim for unemployment insurance benefits. The Department determined that claimant had a valid claim with a weekly benefit amount of \$294. Claimant subsequently claimed benefits for the week of November 4 through November 10, 2018 (week 45-18). When claimant claimed benefits for week 45-18, claimant certified to the Department that he was available for all suitable work during that week. Based in part on that certification, the Department paid claimant \$294 in regular benefits.¹

¹ The Department's witness asserted that its records showed that claimant was paid \$294 in regular benefits for week 45-18 by ReliaCard on November 15, 2018. Audio Record ~ 25:30 to 26:15. Claimant later admitted that he received those benefits that same day by ReliaCard. Audio Record ~ 30:00 to 31:15.

CONCLUSIONS AND REASONS: We agree with the ALJ. Claimant was paid \$294 in regular benefits to which he was not entitled and is liable under ORS 657.310(1) to either repay \$294 to the Department or have that amount deducted from any future benefits otherwise payable to him under ORS chapter 657.

ORS 657.310(1) provides that an individual who received regular 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 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.*

Decision # 64820, which claimant did not timely appeal and became final on December 10, 2018, concluded that claimant was not available for all suitable work during the week of November 4 through November 10, 2018, and therefore was ineligible to receive benefits for that week.² Therefore, as a matter of law, claimant was not entitled to the \$294 in regular benefits he received for that week on November 15, 2018. Claimant's certification to the Department that he was available for all suitable work during that week also was false as a matter of law, and caused him to receive the \$294 in regular benefits at issue. Regardless of claimant's knowledge or intent, he is liable under ORS 657.310(1) to either repay the \$294 in regular benefits to the Department or have that amount deducted from any future benefits otherwise payable to him under ORS chapter 657.

DECISION: Order No. 19-UI-123574 is affirmed.

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

DATE of Service: March 1, 2019

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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² Claimant's request for hearing indicated that claimant mistakenly believed that the Department had decided that claimant had been overpaid for the week ending *December* 10, 2018. However, administrative decision at issue, decision # 152040, determined that claimant had been overpaid for the week ending *November* 10, 2018 for which he had been paid \$294 in benefits to which he was not entitled.



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 بمحكمة الإستئناف 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.

Employment Appeals Board - 875 Union Street NE | Salem, OR 97311
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711
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