

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0128

Reversed & Remanded

PROCEDURAL HISTORY: On October 15, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision assessing a \$4,764 overpayment, \$1,429.20 monetary penalty, and 33 penalty weeks (decision # 192239). Claimant filed a timely request for hearing. On January 9, 2019, ALJ Wyatt conducted a hearing, and on January 17, 2019 issued Order No. 19-UI-122953, affirming the Department's decision. On February 6, 2019, claimant filed an application for review with the Employment Appeals Board (EAB).

CONCLUSIONS AND REASONS: We disagree that the record was sufficiently developed to support a conclusion in this case and remand for additional evidence and a new Order.

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.* In addition, an individual who has been disqualified for benefits under ORS 657.215 for making a willful misrepresentation is liable for a penalty in an amount of at least 15, but not greater than 30, percent of the amount of the overpayment. ORS 657.310(2).

The ALJ concluded that claimant was liable to repay an overpayment based upon his failure to accurately report his hours and earnings when claiming benefits during the weeks at issue, weeks 11-17 to 17-17, 19-17 to 20-17, 22-17 and 23-17, 25-17 and 26-17, 28-17 to 34-17, 11-18 to 21-18, 23-18 to 28-18, 30-18 and 31-18, and 33-18 and 34-18, and, as a result, was overpaid \$4,764 in unemployment insurance benefits. *See* Order No. 19-UI-122953 at 1-2, 4. We agree with the ALJ that claimant was overpaid in that amount and is liable to repay that amount to the Department.

However, the ALJ also concluded that claimant should be liable to pay a \$1,429.20 monetary penalty and serve 33 penalty weeks in addition to repaying the overpayment. *See* Order No. 19-UI-122953 at 7. The ALJ wrote that claimant "offered no plausible explanation for his failure to report hours and

earnings that were even close to accurate for all the weeks at issue”¹ even though he “was aware that his earnings affected his benefits,” had called to correct his earnings report on one prior occasion, and had four prior claims. *Id.* at 6-7. We disagree that the record supports the ALJ’s conclusion; additional evidence is needed before any conclusion may be reached on the misrepresentation issue.

The record shows that claimant offered some potentially plausible explanations for having failed to accurately report his hours and earnings, but the ALJ did not develop the record on those matters. For example, claimant testified that he had a learning disability and was on social security. Transcript at 17, 19. The ALJ did not ask claimant about his learning disability, what it was, or how it affected his ability to accurately report his hours and earnings. Claimant also testified that he is “not really good at math.” Transcript at 19. The ALJ did not ask claimant what that meant, or how his ability to do math in his head affected his ability to accurately report his hours or earnings. Claimant testified that he was confused about how much he earned from work because he used direct deposit and automatically deducted bills from his accounts. Transcript at 23. The ALJ did not ask claimant how his direct deposit and automatic bill deductions confused him or affected his ability to report his gross earnings to the Department.

Additionally, the ALJ did not ask claimant how he kept track of his hours and earnings every week. The ALJ did not ask claimant what materials he looked at (for example, a work schedule, bank account, time cards, pay stubs, etc.) when he was figuring out how many hours he worked every week or what his gross wages were, or what he was going to report to the Department when claiming. The ALJ did not ask why or how claimant decided what to report every week when he filed claims for benefits. The record also shows that claimant filed weekly claims for benefits in some weeks, and chose not to file weekly claims for benefits in other weeks, but the ALJ did not ask claimant why or how he decided when to claim or not to claim, and whether his hours of work or earnings affected that decision.

The record shows that claimant called during one week of the claim at issue to correct his earnings with the Department. The record does not show, however, how claimant figured out his original earnings report was incorrect, or why he called that week. Nor does the record establish whether claimant tried in later weeks to compare his actual earnings to his reported earnings, or to correct any inaccurate reports he had made. Finally, the importance of claimant’s prior claims is also unclear on this record. Although there does not seem to be a dispute that claimant had prior claims, the record fails to show whether or not claimant accurately reported his hours and earnings during those prior claims. Nor does the evidence show whether or not claimant was instructed or told during those prior claims how to keep track of and report his hours and earnings. Absent such evidence, the fact that claimant had prior claims is not meaningful as far as determining whether his failure to accurately report work and earnings in this claim was the result of an intentional misrepresentation or some other factor or combination of factors.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because the ALJ failed to develop the record necessary for a determination of whether claimant should be liable

¹ The record does not fully support the ALJ’s characterization. There were indeed many weeks in which there were significant discrepancies between claimant’s reported earnings and his actual earnings, sometimes totaling over \$200.00. However, claimant’s reports were “close to accurate” in some weeks, including, for example, discrepancies totaling only \$3.48, \$30.25, or \$32.84.

for misrepresentation penalties, Order No. 19-UI-122953 therefore is reversed, and this matter is remanded for development of the record.

DECISION: Order No. 19-UI-122953 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: March 7, 2019

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 19-UI-122953 or return this matter to EAB. Only a timely application for review of the subsequent Order will cause this matter to return to EAB.

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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 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 ໄດ້ ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

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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