

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0290**

*Affirmed*  
*Overpayment*

**PROCEDURAL HISTORY:** On February 6, 2018, the Oregon Employment Department (Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause and disqualifying claimant from receiving unemployment insurance benefits beginning December 3, 2017 (decision # 113328). Decision # 113328 stated that a request for hearing on that work separation decision had to be filed by February 26, 2018 to be timely. The February 6, 2018 decision # 113328 regarding the work separation became final when claimant did not request a hearing by February 26, 2018.

On March 22, 2018, the Department served notice of a second administrative decision assessing an overpayment of \$1,269 Department (decision # 113957) based on the disqualification from the work separation decision # 113328, which had become final on February 26, 2018. The overpayment decision # 113957 stated that a request for hearing on the overpayment decision had to be filed on or before April 11, 2018 to be timely.

On March 26, 2018, claimant filed a late request for hearing regarding the February 6, 2018 decision # 113328 about the work separation. Because the request was late, on March 30, 2018, the Office of Administrative Hearings (OAH) issued an order dismissing claimant's late request for hearing regarding the February 6, 2018 work separation decision, subject to the right to renew that request by submitting more information to OAH within 14 days (by April 13, 2018). However, claimant did not submit information by April 13, 2018. On April 19, 2018, claimant submitted a late response to OAH's March 30, 2018 request for additional information. On April 25, 2018, OAH sent claimant a letter stating that it would not consider claimant's additional information about why he filed a late request for review of the February 6, 2018 work separation decision because he did not provide the additional information on time by April 13, 2018. As a result, the February 6, 2018 decision # 113328 regarding the work separation remained final, disqualifying claimant from receiving benefits beginning December 3, 2017.

On January 11, 2019, claimant requested a hearing about the overpayment decision # 113957. On January 22, 2019, ALJ Kangas issued Order No. 19-UI-123113, dismissing claimant's request for hearing on decision # 113957 because it was filed late, subject to claimant's right to renew that request

by completing and filing the Appellant Questionnaire enclosed with the order within 14 days from the date the order was mailed. On January 30, 2019, claimant filed a timely completed Appellant Questionnaire. On February 4, 2019, the Office of Administrative Hearings issued an order vacating Order No. 19-UI-123113 and returning the matter to the docket for the scheduling of a hearing to address the timeliness of claimant's request for hearing on the overpayment decision # 113957 and, if appropriate, the merits of the overpayment decision.<sup>1</sup>

On February 27, 2019, ALJ Murdock conducted a hearing to address the issues relating to the overpayment decision # 113957. On March 1, 2019, ALJ Murdock issued Order No. 19-UI-125603, allowing claimant's request for hearing on decision # 113957 and affirming the overpayment of \$1,269. On March 20, 2019, claimant filed an application for review of Order No. 19-UI-125603 with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and claimant's written argument. Based on a *de novo* review of the record in this case, and pursuant to ORS 657.275(2), the ALJ's findings and analysis with respect to the conclusion in Order No. 19-UI-125603 allowing claimant's request for hearing because claimant filed a valid and timely request for hearing on decision # 113957, are **adopted**. The remainder of this order addresses the merits of decision # 113957.

**FINDINGS OF FACT:** (1) On November 17, 2017, claimant filed an initial claim for unemployment insurance benefits. The Department determined that claimant had a valid claim with a weekly benefit amount of \$141. When claimant filed his initial claim, he reported that he was no longer working for All Right Roofing, Inc. due to a lack of work.

(2) Claimant claimed benefits for the period from December 3, 2017 through February 3, 2018 (weeks 49-17 through 5-18). Based on claimant's statement to the Department when he filed his initial claim that his work separation from All Right Roofing, Inc. was due to a lack of work, the Department paid claimant \$141 in benefits for each week from December 3, 2017 through February 3, 2018.

(3) Sometime before February 6, 2018, All Right Roofing, Inc. reported to the Department that claimant voluntarily left work. Based on the report from the employer that claimant's work separation occurred because claimant voluntarily left work, on February 6, 2018, the Department issued decision # 113328, retroactively denying benefits for the weeks from December 3, 2017 through February 3, 2018.

**CONCLUSIONS AND REASONS:** We agree with the ALJ. Claimant was paid \$1,269 in unemployment insurance benefits to which he was not entitled, and is liable under ORS 657.310(1) to either repay \$1,269 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 unemployment 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

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<sup>1</sup> The hearing would not address the merits of the February 6, 2018 work separation decision # 113328 concluding that claimant voluntarily quit work without good cause because decision # 113328 became final when OAH did not allow claimant's late request for hearing on that decision.

misrepresentation of a material fact, or failed to disclose a material fact, regardless of the individual's knowledge or intent. *Id.*

The February 6, 2018 decision # 113328 regarding claimant's work separation became final when claimant did not request a hearing by February 26, 2018, and OAH dismissed claimant's request for hearing on that decision as untimely filed. Decision # 113328 concluded that claimant voluntarily left work without good cause, and therefore was disqualified from the receipt of benefits beginning December 3, 2017. Decision # 113328 became final and disqualified claimant from receiving the \$1,267 he received during the period from December 3, 2017 through February 3, 2018. Because that decision is final, claimant does not have a legal right to dispute the Department's conclusion that claimant voluntarily left work and was disqualified from receiving benefits as a result. The Department initially paid claimant the \$1,267 in benefits based on claimant's statement that he was unemployed due to a lack of work. However, that statement is deemed false as a matter of law because it contradicts the final decision # 113328. Because claimant was paid benefits as a result of statements he made that were false as a matter of law, claimant is liable under ORS 657.310(1) to either repay the \$1,267 in benefits to the Department or have that amount deducted from any future benefits otherwise payable to him under ORS chapter 657. This is true even if claimant did not intend to make a false statement to the Department.

**DECISION:** Order No. 19-UI-125603 is affirmed.

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

**DATE of Service:** April 22, 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](http://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 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 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 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**  
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