

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0311

Modified
Overpayment – No Penalties

PROCEDURAL HISTORY: On January 14, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not able to work during the weeks including December 9, 2018 through January 5, 2019, and was ineligible for benefits for those weeks (decision # 115424). On January 30, 2019, the Department served notice of an administrative decision, based on decision # 115424, concluding that claimant willfully misrepresented his ability to work to obtain benefits and assessing a \$1,482 overpayment, 10 penalty weeks and a \$222.30 monetary penalty (decision # 200906). On February 4, 2019, decision # 115424 became final without claimant having tiled a request for hearing. On February 6, 2019, claimant filed a late request for hearing on decision # 115424 and a timely request for hearing on decision # 200906.

On March 6, 2019, ALJ Griffin conducted a consolidated hearing on decisions # 115424 and # 200906. On March 7, 2019, ALJ Griffin issued Order No. 19-UI-125891 dismissing claimant's request for hearing regarding decision # 115424 as untimely without good cause, and Order No. 19-UI-125907 modifying decision # 200906 by assessing a \$1,482 overpayment, 7 penalty weeks and a \$148.20 monetary penalty. On March 27, 2019, Order No. 19-UI-125891 became final without claimant having filed an application for review of that order with the Employment Appeals Board (EAB). On March 27, 2019, the Department filed an application for review of Order No. 19-UI-125907 with EAB. EAB considered the Department's written argument in reaching this decision.

FINDINGS OF FACT: (1) During 2018, claimant filed claims for benefits for the weeks of December 9, 2018 through January 5, 2019 (weeks 50-18 through 01-19), the weeks at issue. When claimant claimed benefits for each of those weeks, claimant certified to the Department that he was physically able to work. Based in part on those certifications, which the Department later concluded were false, the Department paid claimant a total of \$1,482 in regular benefits.

(2) When claimant filed claims for benefits for the weeks December 9 through December 22, 2018 (weeks 50-18 and 51-18), claimant was uncertain about the cause of stomach symptoms he was experiencing at the time and was undergoing various medical evaluations to determine their cause. Although the symptoms occasionally were debilitating, claimant believed he was physically capable of performing the work he sought during those weeks, and reported that he was able to work when filing his claims. Thereafter, on December 30, 2018, claimant received notification from his medical provider that the provider considered him able to work as of December 26, 2018.

CONCLUSIONS AND REASONS: We agree with the ALJ in part. We agree that claimant was paid \$1,482 in regular benefits to which he was not entitled and is liable under ORS 657.310(1) to either repay \$1,482 to the Department or have that amount deducted from any future benefits otherwise payable him under ORS chapter 657. We also agree that claimant did not willfully misrepresent his ability to work during weeks 52-18 and 01-19. However, we disagree with the conclusion that claimant willfully misrepresented his ability to work during weeks 50-18 and 51-18, and conclude that claimant therefore is not subject to penalty weeks or a monetary penalty.

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 # 115424, which concluded that claimant was not able to work during the weeks at issue and therefore was ineligible to receive benefits for those weeks, became final on February 4, 2019. Order No. 19-UI-125891, which dismissed claimant's request for hearing on decision # 115424, became final on March 27, 2019 without claimant having filed an application for review. Therefore, as a matter of law, claimant was not entitled to the \$1,482 in regular benefits he received for the weeks at issue. Claimant's statements to the Department that he was able to work during those weeks therefore were false as a matter of law, and caused him to receive the \$1,482 in regular benefits at issue. Regardless of claimant's knowledge or intent, he is liable under ORS 657.310(1) to either repay the \$1,482 in benefits to the Department or have that amount deducted from any future benefits otherwise payable to him under ORS chapter 657.

ORS 657.215 provides that an individual who willfully made a false statement or misrepresentation, or willfully failed to report a material fact, to obtain benefits may be disqualified for benefits for a period not to exceed 52 weeks. ORS 657.310(2) provides that an individual who has been disqualified for benefits under ORS 657.215 for making a willful misrepresentation also is liable for a penalty of at least 15, but not greater than 30, percent of the amount of benefits the individual received to which the individual was not entitled. The Department had the burden to establish that claimant willfully made false statements or misrepresentations to obtain benefits. *See accord Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

Order No. 19-UI-125907 determined that when claimant claimed benefits for the weeks ending December 15 and December 22, 2018 (weeks 50-18 and 51-18) and reported to the Department that he was physically able to perform the work he sought during those weeks, claimant knew those reports were false and made those false reports with the intent to obtain unemployment benefits. Order No. 19-

UI-125907 at 2-3. The order went on to determine that because claimant was in fact able to work during the weeks including December 23, 2018 through January 5, 2019 (weeks 52-18 and 01-19); he truthfully reported that he was able to work during those weeks. Order No. 19-UI-125907 at 5. The order therefore concluded that claimant “willfully misrepresented his ability to work” and was paid benefits “as a result of his willful misstatements” for weeks 50-18 and 51-18. Order No. 19-UI-125907 at 5. However, while we agree that the record shows that claimant did not falsely report that he was able to work during weeks 52-18 and 01-19, we disagree that the record shows that he willfully misrepresented his ability to work during weeks 50-18 and 51-18.

The record shows that claimant and his multiple medical providers were uncertain about the cause of his stomach symptoms that caused him distress during weeks 50-18 and 51-18. Transcript at 18-25. The fact that after he claimed weeks 50-18 and 51-18, claimant was told by one of his providers that the provider considered him able to seek work as of December 26, 2018, does not mean he willfully misrepresented his ability to work when he filed his claims for those prior weeks. When inquiring about claimant’s state of mind when he filed those claims in December of 2018, the ALJ asked claimant the following questions, under oath, to which claimant gave the following responses:

ALJ: In the first part of December...were you capable of performing the jobs that you were looking for on a full-time basis?

Claimant: Yeah.

ALJ: What I’m wondering is – I mean, at least for the first two weeks...whether or not you thought in your own mind...this is a little uncomfortable, but I’m still able to – I’m still able to work.

Claimant: Yeah, I – I believed I could do it.

Transcript at 23. In that context, that claimant reported that he was able to perform the work that he sought during those weeks when filing his claims does not establish that he willfully misrepresented that fact to obtain benefits, even though a provider later determined that he was able to seek work as of December 26, 2018.

Accordingly, the Department established that claimant was paid \$1,482 in regular benefits to which he was not entitled and is liable under ORS 657.310(1) to either repay \$1,482 to the Department or have that amount deducted from any future benefits otherwise payable him under ORS chapter 657. However, it failed to meet its burden to establish that claimant willfully made a false statement or misrepresentation or willfully failed to report a material fact to obtain benefits. Claimant therefore is not be assessed any penalty weeks or a monetary penalty.

DECISION: Order No. 19-UI-125907 is modified, as outlined above.

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

DATE of Service: April 30, 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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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.

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.

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