

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0378

Affirmed
Late Request for Hearing Dismissed
Overpayment Assessed

PROCEDURAL HISTORY: On January 16, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from December 26, 2018 through January 5, 2019 (decision # 144828). On February 5, 2019, decision # 144828 became final without claimant having filed a timely request for hearing. On February 26, 2019, the Department served notice of an administrative decision assessing a \$1,218 overpayment that claimant was required to repay (decision # 134049). On March 15, 2019, claimant filed a late request for hearing on decision # 144828 and a timely request for hearing on decision # 134049. On April 4, 2019, ALJ M. Davis conducted a consolidated hearing, and on April 5, 2019 issued Order No. 19-UI-127678, dismissing claimant's late request for hearing and Order No. 19-UI-127679, affirming decision # 134049. On April 16, 2019, claimant filed applications for review of both decisions with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders 19-UI-127678 and 19-UI-127679. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2019-EAB-0377 and 2019-EAB-0378).

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), Order No. 19-UI-127678 is **adopted**; claimant's late request for hearing is therefore dismissed. The remainder of this decision will focus solely on the overpayment issue.

FINDINGS OF FACT: (1) On December 20, 2018, claimant filed an initial claim for benefits. His weekly benefit amount was \$609. Claimant filed weekly claims for benefits for the weeks of December 16, 2018 through January 5, 2019 (weeks 51-18 through 1-19).

(2) Each week when he claimed benefits claimant affirmatively reported to the Department that he had actively sought work; the Department would not have paid benefits to claimant during any week in

which he did not affirmatively report that he had actively sought work.¹ Based in part on claimant's weekly reports that he had actively sought work, the Department allocated unpaid waiting week credit to claimant for week 51-18, and paid claimant \$609 per week for weeks 52-18 and 1-19.

CONCLUSIONS AND REASONS: Claimant was overpaid \$1,218 in unemployment insurance that he is liable to repay.

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.*

The Department paid claimant \$1,218 in unemployment insurance benefits during the weeks at issue. The Department determined in decision # 144828, however, that claimant had not actively sought work and was not entitled to benefits for those weeks. Decision # 144828 is final as a matter of law. Therefore, as a matter of law, claimant did not actively seek work, and, as a matter of law, he was overpaid \$1,218 in unemployment insurance benefits he was not entitled to receive.

Claimant received those benefits because of his weekly reports to the Department that he actively sought work as required. Because the Department has determined that claimant did not actively seek work, and that decision is final, claimant's report that he actively sought work is false as a matter of law. There is no indication that claimant's false report was the result of anything other than a mistake in claiming. Regardless of claimant's knowledge or intent in making a false report to the Department, however, claimant is liable to repay the overpayment that resulted from the false statement to the Department.

DECISION: Order Nos. 19-UI-127678 and 19-UI-127679 are affirmed.

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

DATE of Service: April 29, 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,

¹ We take notice of the fact that the Department requires individuals to affirmatively report that they actively sought work during each week claimed, and does not pay benefits unless an individual has so reported. That information is contained in Employment Department records: the weekly claim questions are located in the claimant handbook, publicly available at https://www.oregon.gov/EMPLOY/Unemployment/Claimant_Handbook/Pages/Section-2-Filing-Weekly-Benefits.aspx; information establishing that the Department will not pay benefits unless an individual has reported that they actively sought work is located in the claimant handbook, publicly available at https://www.oregon.gov/EMPLOY/Unemployment/Claimant_Handbook/Pages/Section-3-Maintaining-Eligibility.aspx. Any party that objects to our taking notice of these facts must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.

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 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

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.

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