

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0408**

*Affirmed*  
*Overpayment and Penalties*

**PROCEDURAL HISTORY:** On July 31, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work at Winco Foods without good cause (decision # 152933). Claimant filed a timely request for hearing. On September 11, 2018, ALJ S. Lee conducted a hearing, and on September 17, 2018 issued Order No. 18-UI-116693, concluding that claimant voluntarily left work and was disqualified from benefits effective June 3, 2018. On October 8, 2018, Order No. 18-UI-116693 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On January 8, 2019, ALJ S. Lee issued Amended Order No. 19-UI-122307, concluding that claimant voluntarily left work and was disqualified from benefits effective June 10, 2018. On January 28, 2019, Amended Order No. 19-UI-122307 became final.<sup>1</sup>

On January 30, 2019, the Department served notice of another administrative decision assessing a \$1,771 overpayment, \$265.65 monetary penalty, and 12 penalty weeks (decision # 200903). Claimant filed a timely request for hearing. On March 28, 2019, ALJ Snyder conducted a hearing, and on April 5, 2019 issued Order No. 19-UI-127704, affirming decision # 200903. On April 25, 2019, claimant filed a timely application for review of Order No. 19-UI-127704 with EAB.

**EVIDENTIARY MATTER:** The audio recording from the September 11, 2018 hearing on decision # 152933 is received into evidence as necessary to complete the record, and marked as EAB Exhibit 1. OAR 471-041-0090(1)(a) (May 13, 2019). An electronic copy of the audio will be made available upon request by any party to this case. Any party that objects to our admitting EAB Exhibit 1 into evidence 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(2). Unless such objection is received and sustained, the exhibit will remain in the record.

<sup>1</sup> It is unclear on what statutory authority the ALJ issued an amended order three months after the original order became final.

**FINDINGS OF FACT:** (1) On March 22, 2018, claimant filed a weekly claim for unemployment insurance benefits. Her weekly benefit amount was \$253. The maximum weekly benefit amount in effect at the time of claimant's initial claim was \$604.

(2) Winco Foods Inc. employed claimant for four days in June 2018. On June 10, 2018, claimant called the employer and quit work effective immediately. She did not give advance notice of her intent to leave work or ask to work a 2-week notice period.

(3) Claimant filed weekly claims for benefits from June 10, 2018 to September 1, 2018 (weeks 24-18 to 35-18). On June 17, 2018, claimant filed a weekly claim for the week of June 10, 2018 to June 16, 2018. When filing, she was asked "Did you quit a job last week?" and "Were you fired or suspended from a job last week?" Exhibit 1 at 26. Claimant responded "No" to both questions. *Id.* Because of the way claimant answered those questions, the Department paid her \$1,771 in unemployment insurance benefits for the weeks of June 10, 2018 through July 28, 2018 (weeks 24-18 to 30-18).

(4) On September 11, 2018, claimant participated in a hearing on the Department's July 31, 2018 decision concluding she had voluntarily left her job at Winco without good cause (decision # 152933). During that hearing, the ALJ asked claimant, "Now, did you quit your position with Winco?" and claimant responded, "Yes." EAB Exhibit 1 at ~7:40-8:05. When the ALJ asked if claimant gave notice, claimant responded, "I quit that day." *Id.* When the ALJ asked claimant if she attempted to rescind her resignation, claimant responded that she did not, and explained that because she had quit her job without giving notice first, she did not think Winco would allow her to rescind her resignation. *Id.* at ~11:40.

(5) On January 10, 2019, the Department sent claimant a questionnaire about her work separation from Winco asking claimant to "explain why you reported lack of work when you filed your initial/additional claim and/or reported that you had not quit a job on the weekly report you made to claim benefits." Exhibit 1 at 21. Claimant responded, "When I informed them of a new job and I would give 2 weeks they stated no reason and to just not come back. Was not aware that the benefits would go against Winco so thought was that it was lack of work." *Id.*

(6) On March 28, 2019, claimant participated in a hearing on the overpayment and penalties decision at issue in this case (decision # 200903). The ALJ asked claimant to explain why she reported her work separation with Winco as a layoff. Claimant initially stated that she had reported that she was laid off from Winco because she had offered to give two weeks' notice and Winco rejected it, and that she did not realize when Winco rejected her offer to give two weeks' notice that it would be considered voluntarily quitting. Audio recording at 14:00-14:25; 15:55-16:05. Claimant later testified that she told Winco she was quitting. Audio recording at 20:10-20:15. Claimant also denied during the hearing that she ever reported to the Department that she had been laid off from Winco, testifying that when she spoke with a Department employee about her work separation "I never said that . . . I was laid off, I explained to the person what happened." Audio recording at 14:30-14:55.

**CONCLUSIONS AND REASONS:** Claimant was overpaid and made a false statement or material misrepresentation to get benefits. She therefore is required to repay a \$1,771 overpayment and \$265.65 monetary penalty to the Department, and liable for 12 penalty weeks.

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.*

Order No. 19-UI-122307, which concluded that claimant voluntarily quit work without good cause and was disqualified from benefits beginning June 10, 2018, is final as a matter of law. Pursuant to that order, claimant is ineligible for benefits for the weeks including June 10, 2018 through September 1, 2018 (weeks 24-18 through 35-18). The Department paid claimant \$253 in benefits each week from June 10, 2018 through July 28, 2018 (weeks 24-18 through 30-18), for a total of \$1,771. Because claimant was not eligible for those benefits, she was overpaid.

The overpayment occurred because when claimant claimed benefits for the week of June 10, 2018 through June 16, 2018, she did not report to the Department that she had quit a job that week. That statement was false as a matter of law. Because claimant's overpayment was caused by her false statement or misrepresentation about the nature of her work separation, she is liable to repay the overpayment or have it deducted from any future benefits otherwise payable to her.

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 unemployment insurance benefits is disqualified for benefits for a period not to exceed 52 weeks.

Claimant testified at the March 28<sup>th</sup> hearing that she reported her work separation from Winco as a lack of work or layoff because she did not realize the work separation would be considered a voluntary leaving. Her testimony is not credible, however, because it was internally inconsistent within the March 28<sup>th</sup> hearing, and inconsistent with prior statements claimant made on September 11<sup>th</sup> and in response to the Department's January 10<sup>th</sup> questionnaire. For example, claimant testified on March 28<sup>th</sup> that she did not report a layoff at all, that she did report a layoff but only because she was confused because she had tried to give two weeks' notice of her resignation and Winco would not let her, and also that she had told Winco that she quit her job. She testified on September 11<sup>th</sup> that she quit her job with Winco without giving notice, but said in her January 10<sup>th</sup> questionnaire response to the Department that she had attempted to give notice.

The most credible evidence of claimant's opinion of her work separation most likely occurred at the September 11<sup>th</sup> hearing, because although the hearing occurred after the Department denied claimant benefits, it was before the Department issued notice of an overpayment decision or began to investigate claimant for having allegedly made a false statement about her work separation to obtain benefits. At the September 11<sup>th</sup> hearing, claimant said "Yes" when asked if she quit her job at Winco, and stated that she had quit that day and without giving notice. Despite claimant's knowledge that she had quit her job at Winco, she reported to the Department when she filed her weekly claim for June 10<sup>th</sup> through June 16<sup>th</sup> that she had not in fact quit a job. Claimant's decision to misrepresent the nature of her work separation to the Department when filing her weekly claim for benefits therefore was a willful false statement or misrepresentation made to obtain unemployment insurance benefits. She is subject to disqualification from benefits for a period not to exceed 52 weeks.

The length of the penalty disqualification period and monetary penalty are determined by applying the provisions of OAR 471-030-0052 (January 11, 2018), which provides that the number of weeks of disqualification shall be determined by dividing the total amount of the overpayment by the maximum weekly benefit amount in effect during the first effective week of the initial claim, rounding to the nearest two decimal places, multiplying the result by four, and rounding the total up to the nearest whole number.

Claimant's overpayment was \$1,771, and the maximum weekly benefit amount in effect at the time of her initial claim was \$604.  $\$1,771 \div \$604 = 2.93 \times 4 \text{ weeks} = 11.72$ , rounded up to the nearest whole number = 12. Claimant's penalty disqualification period is therefore 12 weeks.

In addition to repaying the overpayment and serving penalty weeks, an individual who has been disqualified for benefits under ORS 657.215 for making a willful misrepresentation is also liable for a monetary penalty in an amount of at least 15, but not greater than 30, percent of the amount of the overpayment. ORS 657.310(2). OAR 471-030-0052(7)(a) provides that the percentage assessed for an individual who has committed one occurrence of misrepresentation is 15% of the total amount of the overpayment.

Claimant's total overpayment was \$1,771. 15% of \$1,771 is \$265.65. Claimant's monetary penalty is therefore \$265.65.

In sum, claimant is liable to repay the Department \$1,771, pay a \$265.65 monetary penalty, and is assessed a 12-week penalty disqualification period.

**DECISION:** Order No. 19-UI-127704 is affirmed.

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

**DATE of Service:** May 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, 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 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 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.

**Employment Appeals Board - 875 Union Street NE | Salem, OR 97311**  
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