

**EMPLOYMENT APPEALS BOARD DECISION**  
**2019-EAB-0423**

*Modified*  
*Overpayment Assessed*

**PROCEDURAL HISTORY:** On November 27, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from September 20, 2015 to December 5, 2015, December 20, 2015 to December 26, 2015, January 10, 2016 to January 16, 2016, January 31, 2016 through March 19, 2016, and April 3, 2016 through June 4, 2016 (decision # 92458). On December 17, 2018, decision # 92458 became final without claimant having filed a timely request for hearing.

On March 7, 2019, the Department served notice of an administrative decision concluding claimant was overpaid \$8,074 in unemployment insurance benefits he was required to repay to the Department (decision # 152241). On March 12, 2019, claimant filed a late request for hearing on decision # 92458 and a timely request for hearing on decision # 152241.

On March 14, 2019, the Office of Administrative Hearings (OAH) mailed two notices of two hearings, both scheduled for March 28, 2019. On March 28, 2019, claimant failed to appear at the 9:30 a.m. hearing on decision # 92458, and ALJ Monroe issued Order No. 19-UI-127216, dismissing claimant's request for hearing on decision # 92458 for failure to appear.

On March 28, 2019, ALJ Monroe convened a hearing on decision # 152241, which she continued to allow the Department to amend its decision. On March 28, 2019, the Department served notice of a decision canceling decision # 152241. On March 29, 2019, the Department served notice of another administrative decision concluding claimant was overpaid \$3,996 he was required to repay to the Department (decision # 113155). On April 12, 2019, ALJ Monroe reconvened the hearing on decision # 152241.

On April 15, 2019, claimant filed a request to reopen the March 28<sup>th</sup> 9:30 a.m. hearing on decision # 92458. On April 19, 2019 issued Order No. 19-UI-128546, affirming the Department's March 7<sup>th</sup>

decision but concluding that claimant had been overpaid \$3,996 in benefits he was required to repay.<sup>1</sup> On April 23, 2019, OAH mailed claimant a notice of hearing scheduling a hearing on his reopen request for May 8, 2019. On April 25, 2019, claimant filed an application for review of Order No. 19-UI-128546 with the Employment Appeals Board (EAB).

On May 8, 2019, claimant failed to appear for the reopen hearing, and ALJ Monroe issued Order No. 19-UI-129532, dismissing claimant's request to reopen for failure to appear. On May 28, 2019, Order No. 19-UI-129532 became final without claimant having filed a timely request to reopen the hearing.<sup>2</sup>

This matter is before EAB on claimant's application for review of Order No. 19-UI-128546. EAB considered claimant's argument when reaching this decision.

**FINDINGS OF FACT:** (1) On September 22, 2015, claimant filed an initial claim for benefits.

(2) Claimant filed weekly claims for benefits for September 20, 2015 to December 5, 2015 (weeks 38-15 to 48-15), December 20, 2015 to December 26, 2015 (week 51-15), January 10, 2016 to January 16, 2016 (week 2-16), January 31, 2016 through March 19, 2016 (weeks 5-16 to 11-16), and April 3, 2016 through June 4, 2016 (weeks 14-16 to 22-16), the weeks at issue.

(3) During the weeks at issue, claimant was not available for work. Each week he claimed benefits, however, he reported to the Department that he was available for work. The Department paid claimant \$3,996 in benefits during the weeks at issue based in part upon his reports that he was available for work.

**CONCLUSIONS AND REASONS:** Claimant is liable to repay a \$3,996 overpayment to the Department.

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.*

Decision # 92458, which concluded claimant was not available for work during the weeks at issue, is final as a matter of law. Based on that decision, claimant was not eligible for benefits during any of the weeks at issue. However, the Department paid claimant \$3,996 in benefits for those weeks. The Department paid those benefits to claimant because he reported to the Department every week during the weeks at issue that he was available for work. Because decision # 92458, which states otherwise, is final as a matter of law, claimant's statements to the contrary are also false as a matter of law. Regardless of claimant's knowledge or intent in making false statements to the Department, since he

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<sup>1</sup> Order No. 19-UI-128546 affirmed the Department's March 7<sup>th</sup> decision in error; it should have affirmed the Department's March 29<sup>th</sup> administrative decision # 113155.

<sup>2</sup> At the time this decision was issued, no timely request to reopen has been received or processed.

received benefits he was not entitled to because of the false statements, he is liable to repay the overpaid benefits to the Department. Claimant is therefore liable to repay \$3,996 to the Department.

**DECISION:** Order No. 19-UI-128546 is modified, as outlined above.<sup>3</sup>

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

**DATE of Service:** May 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](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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<sup>3</sup> Order No. 19-UI-128546 is modified because although the “Order” section refers to the correct dollar amount of claimant’s overpayment, \$3,996, it refers to the wrong administrative decision, as noted in fn1.



# 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.

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