

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0598

Modified
Overpayment Subject to Collection by Deduction, Not Repayment

PROCEDURAL HISTORY: On February 19, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause and disqualifying claimant from receiving unemployment benefits beginning December 16, 2018 (decision # 141759). Claimant filed a timely request for hearing. On March 14, 2019, ALJ Frank conducted a hearing, and on March 20, 2019 issued Order No. 19-UI-126673, affirming the Department's decision. On April 9, 2019, Order No. 19-UI-126673 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On June 25, 2019, claimant filed a late application for review with EAB. On July 2, 2019, EAB issued Appeals Board Decision 2019-EAB-0587 dismissing claimant's application for review as late without good cause.

On May 23, 2019, the Department served notice of an administrative decision concluding that claimant was overpaid \$2,286 in benefits in part because she failed to disclose her December 2018 voluntary leaving to the Department, and was therefore liable to repay that amount (decision # 90129). Claimant filed a timely request for hearing on decision # 90129. On June 24, 2019, ALJ Meerdink conducted a hearing and issued Order No. 19-UI-132201, affirming the Department's decision # 90129. On June 29, 2019, claimant filed a timely application for review with EAB.

FINDINGS OF FACT: (1) On December 3, 2018, claimant filed an initial claim for unemployment insurance benefits establishing a weekly benefit amount of \$381.

(2) Claimant claimed benefits for the weeks from December 16, 2018 through January 26, 2019 (weeks 51/18 through 04/19), the weeks at issue. The Department initially determined that claimant was eligible for benefits and not disqualified from receiving payments and. Beginning December 16, 2018, the Department paid claimant \$381 for each of the weeks at issue. From December 16, 2018 through January 26, 2019, the Department paid claimant \$2,286 in benefits based on her weekly claims.

3) Subsequently, the Department concluded that claimant should be disqualified from benefits because she voluntarily left work without good cause in December 2018. As a result, claimant was disqualified from benefits retroactively effective to week 51/18, the week of her work voluntary leaving.

CONCLUSION AND REASONS: Claimant was overpaid benefits totaling \$2,286, but claimant is liable only to have the overpayment deducted from future benefits otherwise payable to her.

ORS 657.310(1) states that an individual who is overpaid benefits “because the individual, regardless of the individual’s knowledge or intent, made or caused to be made a false statement or misrepresentation of a material fact, or failed to disclose a material fact” is liable to either repay the benefits or have the overpayment deducted from any future benefits otherwise payable. Where, as here, the Department initially paid benefits to claimant and now seeks to recoup them, the Department has the burden to prove that benefits should not have been paid and that a false statement or misrepresentation occurred. *Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976)

ORS 657.315(1) states that if the overpayment occurred “because of an error not due to the individual providing a false statement or misrepresentation of a material fact or not disclosing a material fact, or because an initial decision to pay benefits is subsequently reversed by a decision finding the individual is not eligible for the benefits, the individual is liable to have the amount deducted from any future benefits otherwise payable to the individual under this chapter or the equivalent law of another state for any week or weeks within five years following the week in which the decision establishing the erroneous payment became final.”

The record shows that the Department paid claimant \$2,286 in unemployment insurance benefits and that Order No. 19-UI-126673 concluding that claimant voluntarily left work without good cause in December 2018 became final when EAB dismissed claimant’s late application for review of that order on July 2, 2019. Unless Order No. 19-UI-126673 is reversed or modified in a future proceeding, claimant was overpaid \$2,286. The remaining issue is whether claimant should be liable to repay the amount of the overpayment to the Department under ORS 657.310, or if she is instead liable to have the overpayment deducted from future benefits otherwise payable under ORS 657.315.

Claimant is liable to have the overpayment deducted from future benefits otherwise payable under ORS 657.315. The record shows that the Department initially decided to pay claimant benefits for the weeks of December 16, 2018 through January 26, 2019, and that the initial decision to pay benefits was subsequently reversed by decision # 141759, which found that claimant was not eligible for benefits beginning on December 16, 2018. The record also shows that a hearing occurred regarding decision # 141759, hearing Order No. 19-UI-126673 affirmed decision # 141759, and Order No. 19-UI-126673 has become final.¹ The record therefore shows that the overpayment was caused because the initial decision to pay benefits was subsequently reversed by a decision finding claimant was not eligible for the benefits. *See* ORS 657.315.

The record does not support the conclusion in Order No. 19-UI-132201 that claimant caused the overpayment and is liable to repay the overpayment rather than have it deducted from future benefits. The Department’s witness at hearing testified that the basis for the overpayment was decision # 141759

¹ Order No. 19-UI-132201 at 1.

and Order No. 19-UI-126673, which affirmed decision # 141759. Audio Record at 3:48 to 4:52. When asked if the Department had any other facts that it wanted the ALJ to consider, the Department witness replied, “No, your honor.” Audio Record at 5:14 to 5:20, 11:42 to 11:48. Claimant testified about her work separation, but did not testify about any information she provided or failed to provide the Department when she made her weekly claims for benefits. Audio Record at 7:45 to 11:23. The record therefore does not show that claimant was overpaid because she made or caused to be made a false statement or misrepresentation of a material fact, or failed to disclose a material fact to the Department. Claimant therefore is not liable to repay the amount of the overpayment to the Department under ORS 657.310.

In sum, claimant was overpaid because the Department’s initial decision to pay benefits was subsequently reversed by a decision finding her ineligible for benefits and a hearing order affirming that decision. The record does not show that the reversal was caused by claimant providing false information or failing to report a material fact. Therefore, ORS 657.315 applies, and claimant is not liable to repay the overpayment. Instead, claimant is liable to have the overpayment deducted from future benefits otherwise payable under ORS chapter 657 or the equivalent law of another state for any week or weeks within five years following the week in which the decision establishing the erroneous payment became final.

DECISION: Order No. 19-UI-132201 is modified, as outlined above.

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

DATE of Service: August 1, 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 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 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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