

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0702

Order No. 19-UI-133178 Affirmed – Disqualification
Order No. 19-UI-133193 Affirmed – Overpayment, Penalties

PROCEDURAL HISTORY: On June 6, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant not for misconduct within 15 days of a planned voluntary leaving without good cause (decision # 104059). On June 7, 2019, the Department served notice of another administrative decision assessing claimant an overpayment of \$584, a monetary penalty of \$87.60, and 4 penalty weeks (decision # 193522). Claimant filed a timely request for hearing regarding both decisions. On July 3, 2019, ALJ Shoemake conducted a hearing regarding decision # 104059 at which the employer failed to appear, and on July 11, 2019, issued Order No. 19-UI-133178, concluding claimant voluntarily left work without good cause. Also on July 3, 2019, ALJ Shoemake conducted a hearing regarding decision # 193522, and on July 11, 2019, issued Order No. 19-UI-133193, affirming decision # 193522. On July 30, 2019, claimant filed a timely application for review of Order Nos. 19-UI-133178 and 19-UI-133193 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Order Nos. 19-UI-133178 and 19-UI-133193. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2019-EAB-0701 and 2019-EAB-0702).

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), Order No. 19-UI-133178 regarding claimant's work separation in which the ALJ concluded that claimant voluntarily left work without good cause is **adopted**. The remainder of this decision therefore focuses on only the overpayment and penalties issues.

FINDINGS OF FACT: (1) On August 14, 2018, claimant filed an initial claim for unemployment insurance benefits. It was her ninth valid claim for benefits and established a weekly benefit amount of \$146. The maximum weekly benefit amount in effect at the time claimant filed the claim was \$624.

(2) Claimant knew she had to answer the Department's questions regarding work separations accurately and that her answers would affect her eligibility for benefits. In January 2019, claimant completed a basic review of the benefit application process that included this information.

(3) On May 3, 2019, claimant gave South Coast Family Harbor a letter of resignation and told the employer her date of resignation would be May 7, 2019 (during week 19-19).

(4) On May 15, 2019, claimant restarted her unemployment benefits claim. When claimant restarted her claim, she answered questions from a Department representative about her claim. When the Department representative asked claimant the reason for her separation from South Coast Family Harbor, claimant stated that it was due to a lack of work. Claimant made this statement to obtain benefits.

(5) Claimant claimed benefits for the period of May 5 through June 1, 2019 (weeks 19-19 through 22-19). These are the weeks at issue.

(6) When claimant claimed week 19-19, claimant certified to the Department that she did not quit a job during week 19-19. Claimant did not tell the Department that she quit a job during week 19-19 so that she would obtain benefits.

(7) Based on claimant's certification that her work separation from the South Coast Family Harbor was due to a lack of work, the Department erroneously paid claimant \$146 for each of the weeks at issue, totaling \$584.

CONCLUSIONS AND REASONS: Claimant is assessed a \$584 overpayment, which she is liable to repay to the Department or have deducted from any future benefits otherwise payable to her, and is assessed an \$87.60 monetary penalty. Claimant is also assessed 4 weeks as a penalty disqualification from future benefits otherwise payable to her.

Overpayment. An individual who receives benefits to which the individual is not entitled 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 repay the amount of the benefits paid or to have that amount deducted from any future benefits otherwise payable to the individual. ORS 657.310(1).

The Department paid claimant \$584 in benefits which she was not eligible to receive because she quit work with South Coast Family Harbor without good cause during week 19-19 and was disqualified from receiving benefits during the weeks at issue. She was, therefore, overpaid \$584. The Department paid benefits to claimant because, when she restarted her claim for benefits on May 15, 2019, she stated that her work separation from South Coast Family Harbor was due to a lack of work and failed to report that she voluntarily quit that job on May 7, 2019. Claimant also stated that she had not quit a job during week 19-19 when she claimed benefits for that week. Had claimant reported that she resigned from her employment with South Coast Family Harbor when she reopened her claim or when she claimed week 19-19, the Department would not have paid or continued paying benefits, and would have completed an investigation regarding the work separation before it paid benefits for the weeks at issue. Claimant's failure to tell the Department when she restarted her claim and claimed week 19-19 that she quit work with South Coast Family Harbor amounted to false statements or failures to disclose material facts. Regardless of claimant's knowledge or intent when withholding that information from the Department, claimant caused the overpayment and is therefore liable to repay it or have the overpayment amount deducted from future benefits otherwise payable.

Misrepresentation and Penalties. ORS 657.310(2) and ORS 657.215, read together, provide that if an individual has willfully made a false statement or misrepresentation, or willfully failed to report a material fact to obtain benefits, the individual may be assessed a monetary penalty of between 15 to 30 percent of the amount of the benefits the individual received to which the individual was not entitled. In addition, an individual who has willfully made false statements to obtain benefits may be assessed a period not to exceed 52 weeks of disqualification from future benefits. ORS 657.215.

Claimant contended that she failed to report that she quit work when she restarted her claim due to “a mistake.” Audio Record at 17:06 to 17:18. Claimant has had nine valid claims for unemployment insurance benefits. It is implausible that an experienced claimant, having just given her employer a letter of resignation less than two weeks earlier, would not have told a Department representative who asked her why her employment ended that she had resigned from her job, unless claimant did so to qualify for benefits. Claimant similarly asserted that she “never intended to push that button” indicating that the reason for her work separation from South Coast Family Harbor was a lack of work, rather than a quit, when she claimed benefits for week 19-19. Audio Record at 19:05 to 19:30; 19:34 to 19:55; 25:41. Claimant’s testimony that she mistakenly pushed “that button” is contradicted and undermined by her other testimony during the hearing alleging that she certified she did not quit a job during week 19-19 when she claimed that week because “she assumed that the quit was not in [week 19-19] because she gave notice on May 3, 2019 [during week 18-19].” Audio Record at 17:26 to 17:51. However, claimant testified that she told the employer her resignation was effective on May 7, 2019 [during week 19-19]. Audio Record at 19:30 to 19:33; 18:56 to 19:04. Moreover, before she certified that her answers were correct when she claimed week 19-19, claimant had the opportunity to review the answers she gave to the questions. Claimant never corrected her response to show that she quit work during week 19-19. The preponderance of the evidence is that claimant willfully failed to report the work separation to obtain benefits.

When an individual has made willful misrepresentations to obtain benefits, the monetary penalty assessed shall be at a rate of at least 15, but not more than 30, percent of the amount of the benefits received to which the individual was not entitled. ORS 657.310(2). OAR 471-030-0052(7) (January 11, 2018) provides that the monetary penalty to which an individual is subject is based on the number of occurrences of misrepresentation that the individual made to obtain benefits to which the individual was not entitled. An occurrence is counted each time an individual willfully makes a false statement or willfully fails to report a material fact to obtain benefits. OAR 471-030-0052(7). Here, claimant willfully misreported the nature of her work separation when she restarted her claim by stating that her work separation was due to a lack of work, and once failed to report that she quit a job when she claimed benefits for week 19-19. Both misrepresentations were to avoid a disqualification from benefits. Therefore, claimant had a total of two occurrences of willful misrepresentation. For the first and second occurrences of misrepresentation within five years of the occurrence for which a penalty is being assessed, the appropriate penalty to be assessed is 15 percent of the total amount of benefits the individual received to which the individual was not entitled. OAR 471-030-0052(7)(a). Fifteen percent of \$584, the total amount of the benefits that claimant received to which she was not entitled for the weeks at issue, is \$87.60. The amount of the monetary penalty which is assessed against claimant therefore is \$87.60.

Where an individual has willfully made misrepresentations to obtain benefits, the individual is also subject to a disqualification from benefits for period of up to 52 weeks. ORS 657.215. OAR 471-030-

0052(1)(b) sets out the manner in which the penalty disqualification period is to be calculated if the individual has made willful misrepresentations about their work separation under ORS 657.176. It provides that the number of weeks of disqualification shall be the number of weeks calculated in the same manner as under OAR 471-030- 0052(1)(a), or four weeks, whichever is greater. Applying OAR 471-030- 0052(1)(a), the disqualification is determined by dividing the total amount of benefits overpaid to claimant by the maximum Oregon weekly benefit amount in effect when claimant filed her initial claim and rounding off to the nearest two decimal places ($\$584$ divided by $\$624 = 0.96$), and multiplying the result by four, and rounding it up to the nearest whole number ($0.96 \times 4 = 3.84$). The nearest whole number is 4. Accordingly, based on her willful misrepresentations to receive benefits, claimant is also subject to a penalty disqualification from future benefits for a period of four weeks.

In sum, claimant voluntarily left work with South Coast Family Harbor without good cause. Claimant is assessed a \$584 overpayment, which she is liable to repay to the Department or have deducted from any future benefits otherwise payable to her, and is assessed an \$87.60 monetary penalty. Claimant is also assessed 4 weeks as a penalty disqualification from future benefits otherwise payable to her.

DECISION: Order Nos. 19-UI-133178 and 19-UI-133193 are affirmed.

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

DATE of Service: September 3, 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 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 Empleo. Si no está de acuerdo con esta decisión, puede presentar una Aplicación 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

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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.

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