

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0715

Modified
Overpayment Reduced, No Penalties

PROCEDURAL HISTORY: On June 3, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision assessing a \$5,719 overpayment, \$1,715.70 monetary penalty, and 41 penalty weeks. Claimant filed a timely request for hearing. On July 11, 2019, ALJ Seideman conducted a hearing, and on July 15, 2019, issued Order No. 19-UI-133308, modifying the Department's overpayment assessment to \$6,193 and concluding claimant was not liable for a monetary penalty or penalty weeks. On August 5, 2019, the Department filed an application for review with the Employment Appeals Board (EAB).

EVIDENTIARY MATTER: The Department submitted corrected information to EAB with its application for review of Order No. 19-UI-133308. The application states, "The authorized representative [from the Department] testified that claimant was overpaid benefits in the amount of \$474 for the week ending March 9, 2019 (week 10/19), which increased the overpayment from \$6121 to \$6193. Claimant was only paid benefits in the amount of \$402 for the week ending March 9, 2019 (week 10/19). The overpayment should be \$6121." Department's Application for Review. EAB admitted the relevant portion of the Department's application for review into the record as EAB Exhibit 1 under OAR 471-041-0090(1)(a) (May 13, 2019), which allows EAB to receive additional evidence into the record if necessary to complete the record. EAB considered EAB Exhibit 1 when reaching this decision, and a copy of EAB Exhibit 1 is attached. Any party that objects to the admission of EAB Exhibit 1 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, EAB Exhibit 1 will remain in the record.

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the portion of the order under review concluding that no monetary penalty or penalty weeks shall be imposed is **adopted**.

FINDINGS OF FACT: (1) Claimant filed initial claims for unemployment insurance benefits on September 30, 2015, establishing a weekly benefit amount of \$133; on October 28, 2016, establishing a weekly benefit amount of \$385; on October 23, 2017, establishing a weekly benefit amount of \$468, and on November 1, 2018, establishing a weekly benefit amount of \$474.

(2) Claimant claimed benefits from December 20 through December 26, 2015 (week 51/15), from June 29 through June 4, 2016 (week 22/16), from July 3 through July 9, 2016 (week 27/16), from November 20 through December 3, 2016, 2016 (weeks 47/16 and 48/16), from January 1 through January 7, 2017 (week 01/17), from July 2 through July 8, 2017 (week 27/17), from November 19 through November 25, 2017 (week 47/17), from December 24, 2017 through January 6, 2018 (weeks 52/17 and 01/18), from February 25 through March 10, 2018 (weeks 09/18 and 10/18), from July 1 through July 7, 2018 (week 27/18), from October 28 through November 10, 2018 (weeks 44/18 and 45/18), from November 18 through December 1, 2018 (weeks 47/18 and 48/18), from December 23, 2018 through January 5, 2019 (weeks 52/18 and 01/19), from January 13 through January 26, 2019 (weeks 03/19 and 04/19), and from February 24 through March 9, 2019 (weeks 09/19 and 10/19), the weeks at issue. Each week claimant claimed benefits, he was asked to report whether he had worked as an employee during the week claimed, and, if so, to report his earnings to the Department. During all the weeks at issue, claimant worked for the employers, Forest River Manufacturing LLC (Forest River) or Beaulaurier Enterprises LLC (Beaulaurier).

(3) During weeks 51/15, 22/16, and 27/16, claimant earned more than his weekly benefit amount of \$133 based on his employment with Forest River. When claimant claimed these weeks he reported to the Department that he had not had any earnings. As a result, the Department paid claimant \$133 per week for these weeks.

(4) During weeks 47/16, 01/17 and 27/17, claimant earned more than his weekly benefit amount of \$385 based on his employment with Forest River. When claimant claimed these weeks he reported to the Department that he had no earnings or earnings less than \$385. As a result, the Department gave claimant waiting week credit for week 47/16 and paid claimant \$385 per week for 01/17 and 27/17. During week 48/16, claimant earned \$380. Week 48/16 was claimant's waiting week. When claimant claimed week 48/16, he reported that he had no earnings for that week. As a result, the Department paid claimant \$385 for week 48/16.

(5) During week 47/17, claimant earned more than his weekly benefit amount of \$468 based on his employment with Forest River. When claimant claimed week 47/17, he reported to the Department that he had earnings less than \$468. As a result, the Department gave claimant waiting week credit for week 47/17. During week 52/17, claimant had earnings of \$82. Week 52/17 was claimant's waiting week. When claimant claimed week 52/17, he reported to the Department that he had no earnings. As a result, the Department paid claimant \$468.

(6) During weeks 01/18 and 10/18, claimant earned more than his weekly benefit amount of \$468 based on his employment with Forest River. When claimant claimed these weeks, he reported to the Department that he had earnings of \$350 each week. As a result, the Department paid claimant \$274 per week for these weeks. During week 09/18, claimant earned \$457.22. When claimant claimed week 09/18, he reported to the Department that he had earnings of \$275. As a result, the Department paid

claimant \$349. During week 27/18, claimant earned \$430. When claimant claimed week 27/18, he reported to the Department that he had no earnings. As a result, the Department paid claimant \$468.

(7) During weeks 44/18, 45/18, 47/18, 03/19, 04/19, 09/19, and 10/19, claimant earned more than his weekly benefit amount of \$474 based on his employment with Forest River or Beaulaurier. When claimant claimed these weeks, he reported to the Department that he had no earnings or earnings less than \$474. As a result, the Department gave claimant waiting week credit for week 44/18 and paid claimant \$347 for week 45/18, \$437 for week 47/18, \$347 for week 03/19, \$337 for week 04/19, \$412 for week 09/19, and \$402 for week 10/19. EAB Exhibit 1. During week 48/18, claimant earned \$360.38. Week 48/18 was claimant's waiting week. When claimant claimed week 48/18, he reported that he had earnings of \$245. As a result, the Department paid claimant \$387 for week 48/18.

(8) During week 52/18, claimant earned \$379.15. When claimant claimed week 52/18, he reported to the Department that he had no earnings. As a result, the Department paid claimant \$474. During week 01/19, claimant earned \$447.75. When claimant claimed week 01/19, he reported to the Department that he had earnings of \$245. As a result, the Department paid claimant \$387.

CONCLUSION AND REASONS: Claimant is liable to repay an overpayment of \$6,121, and not \$6,193, to the Department. Claimant is not liable for penalties.

Remuneration and overpayment. Only unemployed individuals are eligible to receive benefits in any week. See ORS 657.155(1). An individual is "unemployed" "in any week of less than full-time work if the remuneration paid or payable to the individual for services performed during the week is less than the individual's weekly benefit amount." ORS 657.100(1).

Where, as here, the Department paid benefits to claimant during the weeks at issue, the Department has the burden to show that claimant was not eligible to receive those benefits. *See Nichols v. Employment Division*, 24 Or App 195, 544 P2d 1068 (1976).

During weeks 51/15, 22/16, 27/16, 47/16, 01/17, 27/17, 47/17, 01/18, 10/18, 44/18, 45/18, 47/18, 03/19, 04/19, 09/19, and 10/19, claimant earned at least his weekly benefit amount every week. He therefore was not "unemployed" and was not eligible to receive any amount of unemployment insurance benefits during those weeks. The Department paid claimant \$3,999 in benefits for those weeks that he was not entitled to receive because he was not unemployed.

During weeks 48/16, 52/17, 09/18, 27/18, 48/18, 52/18 and 01/19, claimant earned less than his weekly benefit amount from employment. He therefore was "unemployed" during those weeks and eligible for waiting week credit or reduced benefits. ORS 657.150(6) provides that "[a]n eligible unemployed individual who has employment in any week shall have the individual's weekly benefit amount reduced by the amount of earnings paid or payable that exceeds" the greater of ten times the state minimum wage or one-third the individual's weekly benefit amount. The Department paid claimant \$2,122 in benefits for the weeks he was unemployed and eligible for waiting week credit or reduced benefits.

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.*

Claimant earned the weekly earnings reported by the employer and, when he made his weekly claim reports, he reported less than his actual earnings. Because claimant's reported earnings were less than his actual earnings during the weeks at issue, he was not eligible to receive the benefits which he did for those weeks and the Department overpaid him in the amount of \$6,121. Regardless of claimant's knowledge or intent, he received \$6,121 in benefits to which he was not entitled because the earnings information he provided to the Department consisted of false statements of material facts. Claimant therefore is liable to repay the \$6,121 he received to the Department or to have that amount deducted from any future benefits otherwise payable to him.

DECISION: Order No. 19-UI-133308 is modified, as outlined above.

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

DATE of Service: September 10, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.



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

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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